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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

ELIZABETH N.,

Defendant and Appellant.

B293172

(Los Angeles County
Super. Ct. No. DK19551A-D)

APPEAL from orders of the Superior Court of Los Angeles
County. Danette J. Gomez, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephen D. Watson,
Deputy County Counsel for Plaintiff and Respondent.

Appellant Elizabeth N. (mother) appeals from the juvenile court's findings and orders establishing dependency jurisdiction over her children Urielle (born 2013), Raziel (born 2015), True (born 2016) and Justice (born 2017) and removing them from her custody. Mother also appeals from the order denying her petition under Welfare and Institutions Code section 388¹ to return the children to her custody or, in the alternative, to reinstate reunification services. We affirm the jurisdictional and dispositional orders and the order denying the section 388 petition.

BACKGROUND

Detention and section 300 petition

On September 17, 2017, the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging physical abuse of True by mother and Tyrell H. (father).² Doctors told a Department social worker that True had potentially life threatening injuries, including multiple skull and rib fractures in various stages of healing, as well as a recently fractured arm. The injuries were not consistent with mother's explanation that the child had fallen off a bed.

Mother told the social worker that the family had moved to Los Angeles a month ago and was currently homeless. None of the children were vaccinated or had been seen recently by a doctor because of the parents' religious beliefs. Mother denied that any of the children were abused or neglected and denied any domestic violence, substance abuse, or mental health issues.

On September 21, 2016, the Department filed a petition under section 300, subdivisions (a), (b), (e), and (j) alleging that

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

² Father is not a party to this appeal.

True had been hospitalized for multiple fractures in his skull, ribs, and arm that were consistent with non-accidental blunt force trauma, and that he and his siblings were at risk of serious physical harm.³ The juvenile court ordered the children detained from both parents and placed in foster care. The court granted the parents monitored visits.

Pre-adjudication reports

In its October 2016 jurisdiction/disposition report, the Department informed the juvenile court that the family's child welfare history included a January 2015 referral alleging that they had moved to San Diego from Chicago in November 2014 and that Urielle's vaccinations were not up to date. The family also had a child welfare history in Dane County, Wisconsin.

In a November 2016 interview, mother told the social worker that some of True's injuries could have occurred when he fell off a sofa while the family lived in Tijuana from October 2015 to August 2016. Mother said that she and father were from Chicago and had married in 2012. They moved to Wisconsin in January 2013, and from there moved to San Antonio, Texas and then to Dallas. They returned to Chicago in February 2014, and then moved to San Diego in November of that same year. The family moved again in July 2015 to Rosarito, Mexico and from there to Tijuana, where they lived until their most recent move to Los Angeles in August 2016. Urielle was born in Wisconsin, Raziel in San Diego, and True in Chula Vista.

In January 2017, the Department reported that all three children were being assessed for developmental delays. Raziel was displaying signs of Autism and was found to have fluid in

³ The Department subsequently filed amended petitions on January 26, 2017 and March 17, 2017, with additional allegations that mother and father demonstrated mental and emotional problems.

both of his ears. Urielle was being assessed for speech delays and lack of muscle development, and True was being assessed for occupational therapy because of difficulty crawling.

The parents visited regularly with the children until February 2017 when father became agitated and behaved erratically during a visit. When social workers attempted to remove the children from the visiting room, father became physically aggressive and both parents started yelling. The children were visibly upset and crying. On February 24, 2017, the juvenile court found the parents' visits were detrimental to the children and suspended visitation until further notice.

Justice's birth, detention and section 300 petition

Mother gave birth to Justice in February 2017. In a February 27, 2017 interview, mother told the social worker the family had been in California for seven months and had come to the state because they were working with a production company on a documentary. She said they did not plan to stay in Los Angeles and had intended to move to London before the children were detained.

The Department executed a removal warrant for Justice on March 1, 2017. Father became agitated and began yelling, but the parents surrendered Justice to the social worker.

On March 6, 2017, the Department filed a section 300 petition on Justice's behalf alleging that the child was at risk of harm.⁴ The juvenile court ordered Justice detained from both parents.

Adjudication hearing

Following a contested adjudication hearing, the juvenile court sustained both petitions as amended by interlineation,

⁴ The Department filed an amended petition on behalf of Justice on March 17, 2017, that added allegations regarding the parents' mental and emotional problems.

finding that True had been hospitalized for a skull fracture and multiple rib fractures that would not ordinarily occur except as a result of unreasonable and neglectful acts by the parents, that all of the children were at risk of harm as a result of the parents' conduct, and that father's violent and volatile behavior posed a substantial risk of serious physical harm to the children.

The juvenile court appointed an expert to conduct an Evidence Code section 730 evaluation of both parents. The court also reinstated mother's monitored visits on condition that father not be present.

Pre-disposition reports

In May and June 2017, the Department reported that Justice and True were placed together and that True appeared to be thriving in the foster home. The foster parents expressed willingness to have Urielle and Raziel placed with them as well.

Mother was visiting consistently with the children but had difficulty redirecting them when needed. True became anxious before mother's visits and cried, hit his head, and was irritable after the visits. Although mother said that she and father had separated, the Department staff saw father at a nearby coffee shop on the days of mother's visits. The children's caregivers also reported that when mother spoke with the children by telephone, she often passed the phone to father, who also spoke to the children.

In May 2017, court appointed psychologist Steve Ambrose submitted his evaluation of mother. Dr. Ambrose opined that although mother seemed genuinely concerned about the children's welfare, "it is difficult to have any confidence that they would be safe in her care without knowing who injured her son and without having the opportunity to observe her parenting behavior over time in a controlled setting." He stated that mother would "need to maintain a high level of cooperation and

motivation for at least another 12 months to demonstrate that her children can be safely returned to her care.”

Dr. Ambrose noted that if father had abused True, it would be “critically important” for mother to be able keep him out of the home, but that it was uncertain whether mother “would show good judgment in this regard.” Dr. Ambrose further noted that given the parents’ “history of impulsive cross-country moves,” there was a risk that the parents would “abscond with the children to escape DCFS supervision.” He recommended individual counseling for mother, in addition to therapy, parenting classes, and weekly monitored visits.

Disposition hearing

At the June 13, 2017 disposition hearing, the juvenile court ordered the children removed from parental custody. The court granted mother monitored visits and ordered her to participate in parenting classes and individual counseling to address case issues.

Six-month review proceedings

In September 2017, the Department reported that mother was attempting to find housing and employment and visited the children regularly. She wanted the children returned to her custody so she could relocate to Chicago where she had family support.

Mother provided the Department with a document she and father had composed entitled “Family Stabilization Plan 2017--Chicago.” The social worker reported that it was evident mother intended to reunify with father and that she did not understand the severity of the problems that had led to removal of the children.

In November 2017, the Department reported that mother’s efforts to find housing and employment had been unsuccessful. She had completed parenting classes and was participating in

individual counseling. Mother's therapist said that mother was working toward taking care of the family but appeared to be more focused on attending church than on obtaining housing.

Mother's visits with the children took place at the Department's offices on Mondays for two hours. Father was seen nearby during mother's visits in late June and early August 2017. The children's caregivers also reported that they continued to hear father's voice in the background during mother's telephone calls with the children.

Father was arrested on January 7, 2018, for corporal injury to a spouse. Witnesses saw father hit mother, but mother would not cooperate with law enforcement. Mother thereafter obtained a criminal protective order against father that was effective until January 9, 2021.

Mother told the social worker that she had separated from father after the domestic violence incident. She had found employment and had joined a church where friends supported and helped her. Mother said she had enrolled in a domestic violence class and was repairing relationships with her maternal relatives. She asked that the case be transferred to Chicago so she could be closer to her family.

At the six-month review hearing held on February 22, 2018, the juvenile court found that returning the children to parental custody would be detrimental to the children, terminated reunification services, and set a section 366.26 hearing.

Section 388 petition

Mother filed a section 388 petition on June 15, 2018, to change the juvenile court's February 22, 2018 order terminating her reunification services and setting a section 366.26 hearing. In her petition mother stated that she had separated from father after the January 2018 domestic violence incident and was no

longer under his destructive and controlling influence. Mother further stated that her requests were in the children's best interests because she shared a strong bond with them and severing that bond would be damaging to the children.

In response to mother's section 388 petition, the Department's investigator interviewed mother's pastor, who reported that mother had been participating in small group discussions since March 2018 on topics such as healthy relationships, building confidence, and healing from the past. The director at New Star Family Justice Center reported that mother had been participating in individual therapy focusing on domestic violence since March 2018.

Mother said she had been employed since February 2018 and had completed 12 sessions of individual therapy and a parenting program in December 2017. She recognized her past mistakes and believed she was now on the right track by reestablishing contact with maternal relatives who could provide her with support. When the social worker pointed out that True's injuries had led to the Department's intervention, mother denied witnessing any abuse. Mother also denied that any of the children suffered from developmental delays.

Mother said father first became physically violent with her in July 2017, and that he would hit her in the face with closed fists two or three times a week. She said she did not cooperate with law enforcement after the January 2018 domestic violence incident because she was unsure at the time whether she wanted to leave father. She denied having any contact with father since early February 2018.

Mother visited regularly with the children but had not progressed beyond supervised visits. She often required assistance from Department staff to contain, manage, and redirect the children. The children's therapist expressed

concerns about mother's visits and asked that the visits continue to be monitored at the Department's offices.

The maternal grandmother also filed a section 388 petition on June 14, 2018, asking the juvenile court to initiate the process, under the Interstate Compact on the Placement of Children (ICPC), to have the children placed with her in Illinois. In her petition, the maternal grandmother stated that she had moved into a new home that would accommodate all four children, and that placement with her would allow the siblings to remain together and eliminate the uncertainty of foster care.

On June 21, 2018, the juvenile court granted mother a hearing on her section 388 petition. The court granted the maternal grandmother's unopposed section 388 petition to initiate the ICPC process for placing the children with her. In July 2018, mother relocated to Chicago in anticipation of the children being moved to Illinois to live with the maternal grandmother.

Permanency planning proceedings

In its June 2018 section 366.26 report, the Department reported that mother was engaged and played well with the children during her visits, but had difficulty containing, managing, and directing them. She required assistance from the monitor but was receptive to the monitor's prompts. The maternal grandmother had not visited with the children since February.

The Department noted that although mother was working on ensuring her safety and addressing issues of domestic violence, she had not made progress in addressing case issues concerning the children's welfare. The Department further noted that the children were thriving in the care of their current caregivers, who provided the children with a stable, loving and nurturing home environment.

Concurrent Planning Assessments attached to the section 366.26 report stated that Raziel, True, and Justice remained placed together with their foster parents, who were willing to adopt them. Urielle was also placed with foster parents who were willing to adopt her. The Department recommended that parental rights be terminated and that the children be freed for adoption.

Section 388 hearing

At the hearing on her section 388 petition, mother testified that she met father in Chicago, moved to Wisconsin where Urielle was born, went to San Antonio for two weeks, then spent four days in Dallas before returning to Chicago. Mother further testified that she had been separated from father since the January 2018 domestic violence incident and had moved to Illinois to get away from him. She admitted that there had been domestic violence in their relationship before the January 2018 incident and expressed regret about her failure to cooperate with law enforcement. Mother further admitted that her relationship with father had been harmful to the children.

Mother said she had completed a parenting class and one round of individual counseling before her reunification services were terminated, and that she had begun a second round of counseling in March 2018, after termination of her services.

At the conclusion of the hearing, the juvenile court denied mother's petition, finding that she had failed to establish changed circumstances and that granting mother additional reunification services or returning the children to her custody was not in the children's best interests. This appeal followed.

DISCUSSION

I. Jurisdiction

Mother contends the juvenile court lacked subject jurisdiction over Urielle, Raziel, and True under the Uniform

Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.) (the UCCJEA) because Mexico, not California, was the children’s home state at the time the section 300 petition was filed in September 2016. Mother claims the family lived in Mexico for 13 months prior to the filing of the section 300 petition. Mother further contends that even if the juvenile court properly assumed emergency jurisdiction over the children, the court erred by not contacting dependency authorities in Mexico to give Mexico the opportunity to decide whether to exercise its home state jurisdiction over the children.

A. Applicable law and standard of review

In California, the UCCJEA provides “the exclusive jurisdictional basis for making a child custody determination by a court of this state.” (Fam. Code, § 3421, subd. (b).) Subject matter jurisdiction under the UCCJEA is determined as of the time the action in question is commenced (Fam. Code, § 3421, subd. (a); *In re A.C.* (2005) 130 Cal.App.4th 854, 860) and cannot be conferred by stipulation, consent, waiver, or estoppel. (*In re Gloria A.* (2013) 213 Cal.App.4th 476, 481.)

Family Code section 3421, subdivision (a) provides that a court has jurisdiction to make an initial child custody determination only if (1) California is the child’s home state (Fam. Code, §§ 3421, subd. (a)(1), 3402, subd. (g)); or (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).)

The statute defines a child’s “home state” as: “[T]he 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 commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons

mentioned. A period of temporary absence of any of the mentioned persons is part of the period.” (Fam. Code, § 3402, subd. (g).)

Family Code section 3424 “provides an exception to the exclusive jurisdictional bases for making an initial child custody determination” (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097 (*Cristian I.*), authorizing a court to 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, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.” (Fam. Code, § 3424, subd. (a).) “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.]” (*In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1349-1350.) “The finding of an emergency should only be made after an evidentiary hearing”; however, a child “may be detained prior to that hearing for his or her protection. [Citations.]” (*Cristian I.*, at p. 1097.)

“If a California court has exercised temporary emergency jurisdiction pursuant to [Family Code] section 3424, subdivision (a), to protect a child present in the state from actual or threatened abuse or mistreatment, that court may not address the merits of the dependency petition or otherwise make a final child custody determination until it properly asserts jurisdiction under the nonemergency jurisdiction provisions of the UCCJEA. [Citations.] Thus, if the court is aware that another state (or foreign country) qualifies as the child’s home state, the California court must contact the home state court to give it an opportunity to decide whether to exercise its home state jurisdiction. [Citations.]” (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 518-519 (*Aiden L.*)).

When the facts are contested, a juvenile court’s jurisdictional finding under the UCCJEA is reviewed under the deferential substantial evidence standard. (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 520; *In re A.C.* (2017) 13 Cal.App.5th 661, 669 & fn. 5; *Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1285-1286; but see *In re A.M.* (2014) 224 Cal.App.4th 593, 598 [appellate court “not bound by the juvenile court’s findings regarding subject matter jurisdiction, but rather “independently reweigh[s] the jurisdictional facts”].)

A court’s “[f]ailure to comply with the procedural requirements of the UCCJEA is subject to harmless error analysis. [Citations.] Before any judgment can be reversed for ordinary error, it must appear that the error complained of ‘has resulted in a miscarriage of justice.’ (Cal. Const., art. VI, § 13.) Reversal is justified ‘only when the court, “after an examination of the entire cause, including the evidence,” is of the “opinion” that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citations.]” (*Cristian I.*, *supra*, 224 Cal.App.4th at pp. 1098-1099.)

B. The juvenile court had subject matter jurisdiction

There is substantial evidence in the record to support the juvenile court’s assumption of jurisdiction over Urielle, Raziel, and True.⁵ There was evidence that the family lived in San Diego from February 2015 to August 2016, with periods of

⁵ Mother does not challenge the juvenile court’s assumption of jurisdiction over Justice, who was detained shortly after his birth in February 2017, and had not lived with the parents for six months before the March 6, 2017, petition was filed on his behalf. Justice had no home state, and the court properly exercised jurisdiction over him pursuant to Family Code section 3421, subdivision (a)(4).

temporary absence as they traveled “back and forth” between San Diego and Mexico. Mother told a social worker in September 2016 that she and the family had moved from San Diego to Los Angeles the previous month. At the hearing on her section 388 petition, mother testified that the family had moved from Chicago to San Diego, where Raziel was born in February 2015, and that the family “went back and forth between Tijuana [and] San Diego.” True was born in San Diego in January 2016. Urielle and Raziel had thus lived in San Diego from February 2015 to August 2016, and True had lived in San Diego from January 2016 to August 2016. All three children had lived in California for the requisite six-month period before the filing of the September 2016 petition. The juvenile court accordingly had subject matter jurisdiction over them. (Fam. Code, § 3402, subd. (a), (g).)

Mother contends the evidence showed, at best, “ambiguous or *possibly* conflicting reports of the family’s residency status” and that the juvenile court had a duty to clarify that status before assuming jurisdiction over the children. Under the applicable substantial evidence standard, however, an appellate court “must review the entire record in the light most favorable to the prevailing party, resolve all conflicts in the evidence in favor of the ruling or judgment being reviewed, and indulge all reasonable inferences in support of the . . . juvenile court’s findings. [Citation.]’ [Citation.]” (*In re A.C.*, *supra*, 13 Cal.App.5th at p. 669.)

Alternatively, if the family’s travels “back and forth” between San Diego and Mexico were to preclude a finding that California was the children’s home state, their peripatetic lifestyle would also preclude a finding that Mexico was their home state. Under these circumstances, the children would have

no home state and the juvenile court could properly exercise jurisdiction under Family Code section 3421, subdivision (a)(4).

In re Gino C. (2014) 224 Cal.App.4th 959 and *In re A.C.*, *supra*, 130 Cal.App.4th 854, on which mother relies, are inapposite. In *Gino C.* it was undisputed that the children had been living in Mexico for four years before dependency proceedings were commenced, and the court found that Mexico was the children's home state. The issue presented in that case was whether the juvenile court erred by assuming jurisdiction without first contacting Mexico or giving the parties an opportunity to file a custody action in Mexico. (*Gino C.*, at p. 964.) In the instant case, Mexico was not the children's home state, the parties never raised jurisdiction as an issue in the juvenile court below, and the juvenile court made no finding that Mexico was the home state.

The family in *In re A.C.* lived in Mexico but took their child to California for medical treatment. (*In re A.C.*, *supra*, 130 Cal.App.4th at pp. 857-858.) The parents initially agreed to juvenile court jurisdiction in California, but then challenged the court's jurisdiction on appeal. (*Ibid.*) The appellate court found that Mexico was the child's home state and that the family's temporary absence from Mexico to obtain medical treatment in California was insufficient to satisfy requirements for temporary emergency jurisdiction under the UCCJEA. (*Id.* at pp. 860-866.) Here, as discussed, Mexico was not the children's home state. There is no indication in the record that the juvenile court exercised temporary emergency jurisdiction over the children in this case. *In re A.C.* is therefore inapposite.

II. Mother's section 388 petition

A. Applicable law and standard of review

Section 388 provides, in relevant part: "Any parent or other person having an interest in a child who is a dependent

child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made.” “Section 388 provides the ‘escape mechanism’. . . built into the process to allow the court to consider new information. [¶] . . . Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances [¶] . . . [T]he Legislature has provided the procedure pursuant to section 388 to accommodate the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

That being said, “[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.]” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529; § 388, subd. (b).) “[T]he burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change . . . in the best interests of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).)

“Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.’ [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) We will not reverse a juvenile court’s denial of a section 388 petition ““unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].” [Citations.]” (*Stephanie M., supra*, 7 Cal.4th at p. 318.)

B. No abuse of discretion

The juvenile court did not abuse its discretion in denying mother's section 388 petition. Mother alleged in her petition that her separation from father constituted a change of circumstances sufficient for a modification of the court's order terminating reunification services. But mother had already separated from father at the time her reunification services were terminated on February 22, 2018. Mother's separation from father accordingly cannot be considered a change in circumstances for purposes of changing the juvenile court's February 22, 2018 order terminating reunification services and setting a permanency planning hearing.

Moreover, as the juvenile court noted, mother's separation from father did not adequately address the children's welfare. At the time of the hearing on mother's section 388 petition, mother had not progressed beyond supervised visits with the children, and required assistance from Department staff to contain, manage, and redirect the children. Although the children were receiving services for developmental issues, mother denied that any of them suffered from developmental delays.

In order to prevail on a section 388 petition, mother was required to show not only significant changed circumstances, but also that a change of order would be in the children's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) Mother's petition fails to demonstrate that an order providing her with further reunification services would be in the children's best interests.

The factors to be considered when determining a child's best interest were discussed in *In re Kimberly F.* (1997) 56 Cal.App.4th 519. The factors include: (1) the seriousness of the problem which led to dependency; (2) the strength of the relative bonds between the dependent children to both parent and

caretakers; and (3) the degree to which the problem is easily removed or ameliorated. (*Id.* at p. 532.)

The record supports the juvenile court's decision that granting mother additional reunification services or returning the children to her care is not in the children's best interests. True's injuries, which mother remained unable to explain; the family's chronic homelessness and its effect on the children; and mother's inability to manage all four children in an unsupervised setting were issues that remained unaddressed at the time of hearing on mother's petition. The children had been with their respective caretakers for two years (or in Justice's case, for nearly two years) were doing well, and were likely to be adopted. Granting mother's request for further reunification services would further delay permanency planning for the children, who were in stable placements with caregivers committed to adoption. Given these circumstances, the juvenile court did not abuse its discretion in determining that mother's requested changes under section 388 were not in the best interests of the children.

DISPOSITION

The juvenile court's jurisdictional and dispositional findings and orders are affirmed, as is the order denying mother's section 388 petition.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT