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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re O.D., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

J.D.,

Defendant and Respondent.

B279551

(Los Angeles County
Super. Ct. No. DK13738)

APPEAL from an order of the Superior Court of Los Angeles County. Joshua D. Wayser, Judge. Reversed and remanded.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Appellant.

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

Tyna Thall Orren, under appointment by the Court of Appeal, for Minor.

* * * * *

The Los Angeles County Department of Children and Family Services (Department) and minor O.D. appeal the trial court's order terminating jurisdiction over O.D. after the court returned custody of O.D. to mother in the state of Wisconsin.¹ Appellants contend the juvenile court failed to appreciate the scope of its authority to retain jurisdiction even though O.D. and mother were no longer to remain in California. We agree, and reverse the order terminating jurisdiction.

FACTUAL AND PROCEDURAL BACKGROUND

On October 6, 2015, then six-year-old O.D. came to the attention of the Department when mother had a major psychotic episode while she and O.D. were visiting California from their home state of Wisconsin. Mother went to a Los Angeles hospital complaining that dirt on her body was infecting her, and that smells were causing her to scream. She claimed her son was experiencing the same symptoms. Mother was acting erratically and had to be sedated. She was hospitalized so she could be evaluated for a Welfare and Institutions Code section 5150 hold, and the Department was contacted to take custody of O.D.

¹ We granted minor's petition for a writ of supersedeas staying the orders returning O.D. to mother and terminating jurisdiction. We also granted appellants' request that the appeal of the order returning O.D. to mother's custody be dismissed. According to O.D.'s motion to dismiss, mother relocated to California, was complying with her case plan, and it was believed that returning O.D. to her care was now in O.D.'s best interest.

Mother and O.D. had driven from Wisconsin to visit a friend, but had been unable to locate the friend. They had been driving for five days, were almost out of money, and had not eaten in awhile. O.D. appeared to be in good health, but complained that he had also been bothered by a bad smell. He was “very protective” of mother. He did say that he was sometimes hungry.

At the October 9, 2015 detention hearing, O.D. was detained from mother and placed in foster care. On November 2, 2015, mother’s counsel asked the court to order the Department to contact social services and the presiding judge of the children’s division of the court in Milwaukee County, Wisconsin to see if they would take jurisdiction over the matter under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.). The court granted the request, and ordered the Department to make an inquiry to social services in Wisconsin.

According to the Department’s November 9, 2015 progress report, the Department contacted the Milwaukee child welfare office, and learned that the family had a history with children’s services there, but that there was not currently an open case for the family. There were referrals for the family in 2010, 2013, and 2015 based on mother’s mental health and misuse of pain medications. Mother also had a warrant for her arrest for a 2014 child neglect charge stemming from her leaving O.D. unattended in an unlocked car in temperatures below 20 degrees for nearly 40 minutes. O.D. was detained from mother briefly in 2013, and the family received family maintenance services, after mother barricaded herself and O.D. in a bedroom to avoid investigation by social workers and law enforcement, and was placed on involuntary psychiatric hold based on her erratic behavior. The

Milwaukee office informed the Department it would not open a case for mother and O.D. based on mother's conduct in California.

At the December 11, 2015 jurisdiction hearing, the court sustained allegations based on mother's mental health issues and psychotic episode. Mother was ordered to participate in drug testing, a psychiatric evaluation, and mental health counseling.

Later that month, mother left California and returned to Wisconsin, before a mental health evaluation could be completed. A maternal aunt was interested in having O.D. placed with her. At the January 25, 2016 disposition hearing, the court ordered that O.D. be removed from mother, and also ordered that maternal aunt be evaluated for placement under the Interstate Compact on the Placement of Children (ICPC; Fam. Code, § 7900 et seq.).

The case was reassigned to Judge Wayser. At the March 21, 2016 progress hearing, mother's counsel represented that maternal aunt was no longer interested in placement of O.D., and that mother objected to the placement and the ICPC. The court asked the parties to contact maternal aunt to see if she was still interested in the placement, and that the Department was to walk the matter on calendar if the ICPC placement was approved or denied.

The six-month status review hearing was continued a number of times so that information could be obtained from mother's treating therapist and psychiatrist in Wisconsin. Correspondence from mother's therapist and psychiatrist noted that mother continued to suffer from a number of serious mental health issues, but that mother was "stable and able to parent her son." However, mother's therapist also noted that if O.D. was returned to mother, "it is imperative that" she receive individual

therapy, family therapy with O.D., and that she take medication if prescribed by mother's psychiatrist.

At the November 8, 2016 contested review hearing, mother's therapist testified by telephone. He testified that mother "has serious mental health issues" but that she "always has been a good mother to [O.D.]." From his past observations of mother and O.D.'s interactions (mother used to bring O.D. to her therapy sessions), they had a very strong bond, although O.D. "seems to be trying to take the parent role" with mother. He opined that O.D. could be returned to mother if she and O.D. were court ordered to participate in therapy.

Mother requested that O.D. be returned immediately to her care. O.D. and the Department opposed the request. The court stated that it was concerned about mother's "serious psychiatric breakdown in California," and ordered the Department to "contact D.C.F.S. in Wisconsin" to "see if Wisconsin will get involved." The court continued the hearing but stated "if Wisconsin declines to take the case . . . I will intend to release the child to the mother because I think I can't continue. . . ."

According to the Department's November 29, 2016 report, Wisconsin child welfare services would only accept the case as an ICPC case. At the continued hearing, the court noted that Wisconsin "declined to take jurisdiction." The Department clarified that Wisconsin was willing to take the case under the ICPC, and that would provide continued support and supervision for the family. The court ultimately ruled that O.D. would be returned to mother effective December 15, 2016, stating "I don't think I have jurisdiction once the child leaves the state of California."

At a December 14, 2016 progress hearing, O.D. and the Department continued to oppose return of O.D. to mother and termination of jurisdiction. O.D.'s counsel informed the court that although supervision under the ICPC is not required when a child is returned to a parent, the court had discretion to fashion orders to ensure the safety of the child, such as ordering the Department to study and check on the home. The court stated its view that an ICPC is "totally inapplicable" and that the case "has been mishandled." The court noted "you can't perform social work in another state, which means that the child has no basis to be here. . . . [¶] the court shouldn't be exercising jurisdiction ad infinitum over a mother and child who had one contact [with] the state of California." The court commented that "mother has clearly established that there is no risk of harm. This court believes that the only thing the Department could and should do is to call the Wisconsin authorities and say, hey, we're releasing a child to a mother. The court is closing the case, please check up on it. . . . [¶] This is overreach. You're asking for something that can be handled by another state. . . . This court is not going to continue jurisdiction over a citizen of another state, when it doesn't have a proper basis to do it." The court terminated jurisdiction.

Minor and the Department timely appealed, and we issued a stay of the orders returning O.D. to mother and terminating jurisdiction.

DISCUSSION

O.D. and the Department contend the juvenile court erred when it terminated jurisdiction over O.D., arguing that the court did not appreciate the scope of its discretion to retain jurisdiction

and enter orders to protect O.D. We agree, and therefore reverse the order terminating jurisdiction over O.D.

A juvenile court may retain jurisdiction over a child even if the child is not present in the state. (Fam. Code, § 7901.) “The ICPC is an agreement among California and other states that governs ‘sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption’ (Fam. Code, § 7901, art. 3, subd. (b).) ‘The purpose of the ICPC is to facilitate cooperation between participating states in the placement and monitoring of dependent children. (*Tara S. v. Superior Court* (1993) 13 Cal.App.4th 1834, 1837.)’ ” (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 458.)

“When a child will be placed with his or her parent in another state . . . the court has discretion to take the steps it deems necessary to ensure the child’s safety and well-being in that placement. Those steps may include: [¶] (1) Directing the child welfare agency to request an independent, non-ICPC home study or courtesy check; [¶] (2) Directing the child welfare agency to enter into a contract with a public or private agency in the receiving state to obtain a home study or other needed information; [¶] (3) Directing the child welfare agency to enter into an informal agreement with a public or private agency in the receiving state, or requesting a courtesy check from such an agency, to obtain needed information; or [¶] (4) Any other steps that the court deems necessary to ensure the child’s safety and well-being.” (Cal. Rules of Court, rule 5.616(g); ICPC Reg. No. 2, § 3.)

Mother does not dispute that the court had discretion to retain jurisdiction over the family even if O.D. was returned to

her care in Wisconsin. Mother contends, instead, that the court, relying on the testimony of her therapist, found that there was no need for continued supervision of the family. We are not persuaded.

A ruling within the court's discretion will be set aside if the court failed to exercise its discretion or understand the scope of its discretion. (Welf. & Inst. Code, § 366.21, subd. (e); Cal. Rules of Court, rule 5.710(a)(1); see, e.g., *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386, 392.) Here, it is clear that the juvenile court was under the misapprehension that it had to terminate jurisdiction if O.D. was returned to mother in Wisconsin.

DISPOSITION

The order terminating jurisdiction is reversed. The matter is remanded to the juvenile court for further proceedings consistent with this opinion.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.