Filed 10/10/18 In re C.E. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.E., et al., Persons Coming Under the Juvenile Court Law.	B290923
C.E., Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	(Los Angeles County Super. Ct. Nos. CK08799B, CK08799C, CK08799D)

ORIGINAL PROCEEDING. Petition for writ of mandate. Philip Soto, Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc.; Law Office of Katherine Anderson, Shannon Humphrey and Rosezetta Upshaw for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, Peter Ferrera, Deputy County Counsel, for Real Party in Interest.

Father C.E. (father) filed a petition for an extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's adjudication and disposition for two of his three children, An.E. and Ar.E. Father contends the court lacked jurisdiction over An.E. and Ar.E. under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam. Code, § 3400, et seq.) because the children were not in California immediately before the filing of the petition. He also challenges the court's denial of reunification services as to them. We reject his contentions and deny his writ petition.

BACKGROUND

The family consists of father, E.A. (mother), and children Cl.E. (born 2001), An.E. (born 2007), and Ar.E. (born 2012). At issue here is a dependency petition filed by the Los Angeles County Department of Children and Family Services (DCFS) on December 20, 2016. The petition asserted numerous grounds for exercising jurisdiction over all three children based on allegations that father physically abused Cl.E., the parents engaged in violent altercations in the children's presence, and father had a history of drug abuse and was currently abusing drugs. (Welf. & Inst. Code, § 300, subds. (a), (b), & (j).)[1] The details regarding

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[1] All undesignated statutory citations are to the Welfare and Institutions Code.

these allegations are not necessary to the resolution of father's claims, so we limit our discussion accordingly.

A. The Family's Whereabouts Immediately Before the Petition Was Filed

In the December 20, 2016 dependency petition, DCFS noted that Cl.E. had been detained on December 15, 2016 and was residing with paternal aunt and uncle in Van Nuys, California. The whereabouts of mother, father, An.E., and Ar.E. were unknown at the time.

1. Recent Referral History

The family had a history of referrals in California from 1993, 2000, 2002, 2015, and 2016. In March 2016, they were subject to a referral in Los Angeles County alleging their home lacked utilities and the parents had engaged in physical violence with the children present. An April 2016 referral in San Bernardino County involved allegations that the children had no running water and electricity in their home.

Mother also had a criminal record in California dating back to 1993.

2. December 1, 2016 Referral

The family came to the attention of DCFS again on December 1, 2016, through a referral alleging father had left Cl.E. at the home of paternal relatives two months earlier without making a plan for his care. The reporting party claimed that seven or eight months earlier, mother and father had engaged in a physical altercation, and when Cl.E. intervened to protect mother, father struck him. The reporting party also reported that the parents had violent altercations in the presence of the children, most recently a few weeks before the referral when mother had hit father.

The reporting party had visited the family about three and a half weeks prior to the referral, i.e., early November 2016, and the family was living in a car. The children appeared malnourished. A month earlier they had appeared dirty with insects on them.

3. Pre-Petition Investigation

In the days between the referral and the filing of the dependency petition, a social worker conducted interviews with family members and discovered the following information on the family's whereabouts:

December 7, 2016

A social worker interviewed Cl.E. He said the parents had been living in and out of hotel rooms. They had dropped him off at paternal aunt and uncle's house in mid-October 2016, and his siblings were sleeping in a car. He said he last saw his siblings a week before Thanksgiving—which would have been around November 17, 2016—and they were homeless.

December 14, 2016

The paternal uncle reported speaking to a cousin of his who had seen mother, father, An.E., and Ar.E. about 15 days prior, around the beginning of December 2016. A paternal cousin also reported speaking to mother's adult son C.C. about two days earlier, or December 12, 2016, who had spoken to father. Father told C.C. that he, mother, and the two children were in staying in Hesperia, California.

Cl.E. reported having spoken to his parents "on Friday," which would have been December 9, 2016. They told him they were in Victorville, California, renting a room in an apartment. They had enrolled An.E. in school.

December 15, 2016

A maternal uncle reported speaking to mother a week prior, or December 8, 2016, who said the family was "on vacation." He had seen the family about three weeks prior, which would have been around Thanksgiving on November 24, 2016.

December 16, 2016

Mother's adult son C.C. last spoke with mother on December 7, 2016, who told him the family was in Victorville, California.

Other Evidence of Whereabouts

The social worker uncovered an open welfare case for mother in California. She had applied for various benefits on November 3, 2016, but they were denied because she had not submitted required documentation. She had been receiving aid in San Bernardino County until October 31, 2016, and she was reported homeless in San Bernardino and Los Angeles counties. The family was using the "DPSS/East Valley District office" as a mailing address.

Assessment by Social Worker

The social worker was unable to locate the family, concluding the parents were currently homeless. It was recommended that the court detain An.E. and Ar.E. "at large" and detain Cl.E. to assure the children's safety and well being.

4. December 19, 2016 Phone Call

In an addendum report, the social worker reported she had finally spoke to father by phone on December 19, 2016. She had been able to reach him and mother at a phone number with a 323 area code, which was the same phone number where the social worker had attempted to reach Cl.E. as well as paternal aunt and

uncle.[2] The social worker "informed the mother of the Detention hearing date, time, location, and allegations. The mother stated that she would attend the Detention hearing." Father reported he and mother had left San Bernardino and Los Angeles counties and were now "out of state." They did not plan to return, but he said he would be back in two weeks to pick up Cl.E. Father declined to provide a physical address.

5. December 20, 2016 Detention Hearing

At the detention hearing, the juvenile court detained all three children from both parents. Cl.E. was placed with his paternal uncle. Because the parents', An.E.'s, and Ar.E.'s whereabouts were unknown, the court issued protective custody warrants for the two children and arrest warrants for the parents.

6. Post-Detention Proceedings

The social worker spoke to mother by telephone on January 17, 2017, and mother reported the family was residing in Dallas, Texas. She did not provide a home address, claiming she did not know it because they "just moved 2 days prior." The social worker noted it was "unclear if family is actually residing in Dallas, Texas as reported by mother since she didn't provide a home address."

On February 9, 2017, the paternal uncle reported that Cl.E. spoke to mother and An.E. regularly on the phone. Mother told Cl.E. the family was residing at an unknown address in Texas and they were in the process of hiring an attorney.

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[2] We take judicial notice that 323 is an area code in California. (North American Numbering Plan Administration <https://www.nationalnanpa.com/enas/geoAreaCodeNumberReport.do> [as of Oct. 5, 2018].)

On February 23, 2017, the family was confirmed to be in Texas when a social worker spoke with a Dallas Child Protective Services worker. The worker reported that she had received a referral from a local hospital following a violent altercation between mother and father in front of the children on January 9, 2017. Father had been arrested, and the worker had helped mother get into a shelter. But mother had left the shelter, and the worker's office had been unable to locate her since "sometime in January 2017." The worker had gone to an address for mother, and mother's friend at the residence reported that mother had been staying there. On a follow-up visit, the worker learned mother had moved out of the home. As of February 28, 2017, the worker had no new information as to the family's whereabouts.

On March 14, 2017, the juvenile court adjudicated the section 300 petition as to Cl.E. only, sustaining the counts pled and ordering that he remain detained with paternal uncle. The protective custody warrants for An.E. and Ar.E. and the arrest warrants for mother and father remained outstanding.

DCFS remained unsuccessful in locating mother, An.E., and Ar.E, but a social worker eventually spoke to father in Texas on May 2 and 5, 2017, after he was released from jail on probation. He claimed he had no contact with mother since January and he did not know her whereabouts or the whereabouts of An.E. and Ar.E. He had received the petition and had hired an attorney to represent him, although he would not be at the next hearing.

The court held a disposition hearing on May 15, 2017, for Cl.E. Father appeared by telephone and was represented by counsel. Mother did not appear but she was represented by

counsel. The court declared Cl.E. a dependent, removed him from parents' custody, and ordered family reunification services for father. The court ordered father to attend substance abuse treatment, domestic violence counseling, and individual counseling. The court recalled father's arrest warrant, but the arrest warrant for mother and the protective custody warrants for An.E. and Ar.E. remained in effect. The court ordered a six-month review hearing for Cl.E. and continued jurisdictional proceedings for An.E. and Ar.E. to November 14, 2017, because they and mother had not been located.

For the six-month review hearing for Cl.E., DCFS reported Cl.E. was thriving with paternal aunt and uncle. Father was still in Texas and wanted to reunite with Cl.E. He had enrolled in domestic violence classes and had completed three classes. He had not enrolled in individual counseling or drug testing, and asked for assistance in doing so. He said he called Cl.E. weekly and sent money, but he could not leave Texas for visits due to his probation. He admitted he "slacked" but was ready to participate in services. DCFS recommended termination of reunification services for father with regard to Cl.E. Father reported he had not had contact with mother, An.E., and Ar.E., and their whereabouts remained unknown, although DCFS believed they were still in Texas.

At the six-month hearing on November 14, 2017, the court granted father six more months of reunification services for Cl.E. The court set the 12-month review hearing for Cl.E. and the adjudication hearing for An.E. and Ar.E. for May 15, 2018.

In a status review reported filed on April 26, 2018, DCFS reported father had completed a 24-week batterers program. He had attended three individual counseling sessions and missed

three sessions. DCFS recommended reunification services continue. DCFS reported that, despite its efforts, DCFS was still unable to locate mother, An.E., and Ar.E.

On April 30, 2018, mother, An.E., and Ar.E. were finally located at an address for father in Texas. Mother claimed she was unaware of the open dependency case in Los Angeles County. An.E. and Ar.E. were returned to Los Angeles and all three children were placed in the same foster home.

Mother appeared at the hearing on May 15, 2018. She was given supervised visits and the matter was continued for a contested hearing on June 21, 2018.

DCFS subsequently recommended that the jurisdictional allegations for An.E. and Ar.E. be sustained and the parents be given reunification services. DCFS reported that father had set up drug testing, but it was concerned because father knew he was going to be tested twice a week for 30 days. It later reported that father had tested negative for drugs on three dates.

On June 21, 2018, the court held the 18-month hearing for Cl.E. and the jurisdictional hearing for An.E. and Ar.E. For Cl.E., the court terminated family reunification services and set the matter for a section 366.26 hearing for permanent placement.

For An.E. and Ar.E., the court sustained the allegations in the petition and removed the children from the parents' custody. The court denied father's request for family reunification services and set a section 366.26 hearing for permanent placement. The court denied services by finding that the time period for reunification had expired. At the hearing, however, the court also explained that father "was nevertheless given services for [Cl.E.]. He did not comply with those services. I would feel entirely different if he had—or if he was very close to completion

which he is not. In fact, I was analyzing this. I was thinking that had father fully complied with the case plan, had we been able to discern that it would be safe for [Cl.E.] to be moved to Texas with father, I would have had no problems releasing [An.E.] and [Ar.E.] to the father. But we are not in that position. He's not complied with the case plan. There's no reason to believe that he will with another six, twelve, or eighteen months. Even though he had no power to bring them back."

Father filed the pending extraordinary writ to challenge the court's orders.

DISCUSSION

I. The Evidence Supported Jurisdiction in California Pursuant to the UCCJEA[3]

Under the UCCJEA, "a California court has jurisdiction in a dependency case if California was the child's home state when the proceeding commenced, with 'home state' defined as the state in which the child lived with a parent for at least six consecutive months immediately before the commencement of the proceeding. (Fam. Code, §§ 3402, subd. (g), 3421, subd. (a)(1), 3422.)" (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 245–246 (*Claudia S.*).) Thus, "for 'home state' jurisdiction to apply, the child must have (1) lived in the state with a parent or a person acting as a parent (2) for at least six consecutive months (including temporary absences) (3) immediately before the commencement of the child custody proceeding." (*In re Gloria A.* (2013) 213 Cal.App.4th 476,

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[3] Because we find sufficient evidence supported jurisdiction, we need not address DCFS's alternate argument that father's challenge is barred by the disentitlement doctrine. (See *In re Baby Boy M.* (2006) 141 Cal.App.4th 588, 596 (*Baby Boy M.*).)

482–483 (*Gloria A.*).) "Subject matter jurisdiction over a dependency action under the UCCJEA either exists or does not exist at the time the petition is filed. [Citations.] Jurisdiction may not be conferred by mere presence of the parties or by stipulation, consent, waiver or estoppel." (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 516.)[4]

Father contends the evidence was insufficient to show the family lived in California *immediately* prior to the December 20, 2016 dependency petition. He contends the only reliable evidence of the latest date that An.E. and Ar.E. were in California was Cl.E.'s statement that he saw his siblings a week before Thanksgiving, i.e., November 17, 2016, or more than 30 days before the petition. (See *Gloria A., supra,* 213 Cal.App.4th at p. 484 [28-day absence before filing of petition insufficient to show presence immediately prior to commencement of proceeding].) We disagree.

Specific evidence placed the family in California at least through mid-December 2016. Based on the family's referral history, the evidence showed the family had been living in California at least as of April 2016—eight months before the petition was filed. Mother had been receiving aid in San Bernardino County until October 31, 2016, and had applied for various benefits in California on November 3, 2016. The family

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[4] As father acknowledges, we would normally review the trial court's finding of jurisdiction for substantial evidence. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1286.) Yet, father raises the jurisdictional issue for the first time before us, so there was no express ruling from the trial court for us to review for substantial evidence. Even applying a de novo standard of review to this record, we would find jurisdiction proper.

had been using the "DPSS/East Valley District office" as a mailing address. Family members also reported either speaking with or seeing the family in October, November, and the first half of December 2016. Cl.E. spoke with his parents on December 9, 2016—eleven days before the petition—and they told him they were in Victorville, California, where they had rented a room and had enrolled An.E. in school. The latest date of reported contact in California was December 12, 2016, or seven days before the petition was filed, when mother's adult son had said father told him the family was staying in Hesperia, California.

We may also reasonably infer the family was still living in California very near or on the day the petition was filed on December 20, 2016. As noted, they had begun to set down roots in California when Cl.E. learned eleven days prior to the hearing that they had rented a room and enrolled An.E. in school. On December 19, 2016—one day before the petition was filed—the social worker finally spoke to father at a phone number with a California area code, which was the same number where the social worker had tried to reach Cl.E. and paternal aunt and uncle, all of whom were in California. While father said vaguely that the family had left San Bernardino and Los Angeles counties and were now "out of state," he declined to give an actual address. On the same call, mother stated she would attend the detention hearing the next day in Los Angeles County, strongly suggesting the family was not, in fact, out of state.

When mother finally reported that the family was in Dallas, Texas on January 17, 2017, she declined to provide a home address. The social worker stated at that point it was still "unclear if family is actually residing in Dallas, Texas as reported by mother since she didn't provide a home address." It was later

uncovered that father had been arrested in Texas on January 9, 2017 for a physical altercation with mother, so the family must have been in Texas on that date. But they could have easily relocated after the filing of the petition and before this incident.

This record supports a finding that An.E. and Ar.E. were present in the state immediately before the petition was filed, satisfying home state jurisdiction pursuant to the UCCJEA.

II. Remand is Unnecessary to Evaluate the Present Circumstances

Confusingly, father contends that even if the juvenile court properly exercised home state jurisdiction pursuant to Family Code section 3421, subdivision (a)(1), we should remand the matter for the court to assess the children's current circumstances pursuant to Family Code section 3421, subdivision (a)(2). We reject his argument because that subdivision provides an *alternate* basis for jurisdiction, not a separate basis for remand. (See Fam. Code, § 3421, subd. (a) [setting out four independent ways to establish jurisdiction]; *Gloria, supra,* 213 Cal.App.4th at p. 482.) Both cases father cites to support his argument are factually distinguishable. (See *Baby Boy M., supra,* 141 Cal.App.4th at pp. 598–601 [record insufficient to show any grounds for non-emergency jurisdiction and court should not have held jurisdiction and disposition hearings before locating child]; *Claudia S., supra,* 131 Cal.App.4th at p. 242 [jurisdiction over children proper but absence of family and counsel "under the unique circumstances" rendered proceedings fundamentally unfair].)

As part of this argument, father also contends in passing that the juvenile court lacked personal jurisdiction over An.E. and Ar.E. due to their absence from California. The UCCJEA

makes clear that "[p]hysical present of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." (Fam. Code, § 3421, subd. (c); see *Claudia S., supra,* 131 Cal.App.4th at p. 246.)

III. Remand is Unnecessary for a Further Hearing on Reunification Services for Father

Father argues remand is necessary because the juvenile court improperly denied him reunification services by finding the statutory time period for services for An.E. and Ar.E. pursuant to section 361.5, subdivision (a)(1)(A) had expired by the June 21, 2018 disposition hearing. He argues the statutory period for reunification began to run at the June 21, 2018 disposition hearing when An.E. and Ar.E. were removed from the parents' custody, not at the detention hearing on December 20, 2016, when the children were ordered detained from the parents.

Father is correct. The statutory period for reunification services pursuant to section 361.5 "does not start to run unless and until the child is removed from the physical custody of the parents and the court determines whether they are entitled to reunification services according to the lengthy analysis set forth in that statute." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1165 (*T.W.*).)[5] For purposes of the statute, removal occurs at

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[5] Section 361.5, subdivision (a) states in relevant part that "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." "When the child is over the age of three, 'court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care . . . .' (§ 361.5, subd. (a)(1)(A).) A child is 'deemed to have entered foster care on the

disposition, not after a detention hearing, even if the children are detained out of the home. (*Id.* at p. 1167.) Thus, while An.E. and Ar.E. were ordered detained at the December 20, 2016 detention hearing, they were not "removed" from parental custody until the disposition hearing on June 21, 2018. The time period for services did not begin to run until that date.

Remand is unnecessary, however, because the juvenile court also denied father reunification services for An.E. and Ar.E. at the disposition hearing when it found father failed to reunify with the older sibling Cl.E. and terminated services as to him. Pursuant to section 361.5, subdivision (b)(10), a court need not grant reunification services when it finds clear and convincing evidence that it "ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling . . . and . . . , according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian."

Father has not addressed section 361.5, subdivision (b)(10) or challenged the sufficiency of the court's findings that he failed to reasonably comply with services in order to reunify with Cl.E. Thus, even though father was statutorily *eligible* for reunification

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earlier of the date of the jurisdictional hearing . . . or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent. . . .' (§361.49.) Notwithstanding the presumptive 12-month limitation, services can be extended up to 18 months 'after the date the child was originally removed from physical custody of his or her parent . . . .' (§ 361.5, subd. (a)(3).)" (*T.W., supra,* 214 Cal.App.4th at p. 1165.)

services for An.E. and Ar.E., the juvenile court properly denied them and remand is unnecessary.

DISPOSITION

Father's petition for extraordinary writ is denied. Having served its purpose, our order to show cause is discharged.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.