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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re G.L., a Person Coming
Under the Juvenile Court Law.

B268160

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK11616)

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Zeke D. Zeidler, Judge. Reversed and remanded with directions.

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

Mary C. Wickham, County Counsel, and William D. Thetford, Deputy County Counsel, for Respondent.

Appellant Jenny L. (Mother) challenges jurisdictional and dispositional orders issued by the juvenile dependency court as to her daughter, G.L., including an order terminating the court's jurisdiction with a family law order granting Brian B. (Father) sole physical and legal custody of G.L. Mother contends the court's orders are not supported by substantial evidence. We reverse.

FACTS

Mother and Father are the parents of G.L., born in December 2009 in Missoula County, Montana, apparently after a short, non-marital relationship.

In July 2013, Mother moved to California. At that time, Mother left G.L. with her maternal grandparents in Montana, with plans to reunite with G.L. after Mother found a job and settled in California.

In May 2014, Father filed a "parenting petition" in a state district court in Silver Bow County, Montana.¹ Mother received a

¹ We take judicial notice that the county seat of Silver Bow County is Butte. The record contains materials showing that Father also filed a parenting case in a state district court in Missoula County, Montana. We take judicial notice that the county seat of Missoula County is Missoula. The Missoula County materials include comments by a court "standing master" to the effect that Father had filed the parenting case in Silver Bow County, Montana, "in error," in that he had inaccurately stated that he had not filed any other such cases in Montana. As we discuss below, the state district court in Missoula County issued an order in June 2015 "ceding" its jurisdiction to the local dependency court in the dependency proceedings which are at issue in Mother's current appeal. We see nothing in the record to show that the state district court in Silver Bow County (Butte) ever ceded its jurisdiction to the dependency court.

summons in the Silver Bow County matter in September 2014, apparently in California, but did not respond. Shortly thereafter, in November 2014, either the maternal grandfather took G.L. to live with Mother in California, or Mother travelled to Montana and “removed” G.L. from the state “without notice to [Father] or the [Silver Bow County] court.”

On December 19, 2014, the state district court in Silver Bow County, Montana, defaulted Mother and issued a “parenting plan” order that designated Father to be G.L.’s “primary residential care parent,” and awarded “parenting time” to Mother pursuant to a specified schedule. Further, the Silver Bow County custody order provided that Mother and Father “shall have equal say as to the child and their conduct,” and that the parents “shall jointly make major decisions regarding the child’s education, non-emergency health care, religious upbringing, and recreational activities,” and that disputes would be submitted to mediation.

On December 29, 2014, Father opened a local family law court case (L.A. Super. Ct., case No. GD056182) and registered the custody order from the state district court in Silver Bow County, Montana.

On February 10, 2015, local officials assisted Father in obtaining physical custody of G.L. from Mother pursuant to the locally-registered Montana state court custody order. On the same day, Mother applied for and obtained a temporary emergency restraining order in the local family law court case noted above. (Case No. GD056182) The local family law court restraining order prohibited Father from taking G.L. out of California, and directed him to return G.L. to Mother’s custody, pending an evidentiary hearing — set for March 12, 2015, apparently to address Mother’s contentions that the custody

order issued in the Montana state court (Silver Bow County) should be “quashed” or otherwise modified under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); see Family Code section 3400 et seq. The hearing was thereafter continued.

On March 16, 2015, the Los Angeles County Department of Children and Family Services (DCFS) received a “5-day referral” alleging general neglect of G.L. by Mother. The “caller” reported that Mother had “abandoned” G.L. with her grandparents, and that Mother had a “history of mental health care issues,” including a “history of psychiatric hospitalizations,” as well as multiple suicide attempts. The caller expressed concern that the maternal grandparents had recently returned G.L. to Mother’s custody in California, and that Mother was not taking prescribed medications, and that she was “self-medicate[ing] with alcohol.” During March, April and May 2015, a case social worker conducted a number of interviews with Mother, Father, G.L. and other family members. Mother agreed to a drug screen.

Meanwhile, on April 28, 2015, the family law court in Los Angeles County Superior Court case number GD056182 found that Mother had not continuously resided in California for six months to establish residency for purposes of the UCCJEA and, on that foundation, ruled that “the State of Montana currently has jurisdiction over all Family Law proceedings including the issue of custody and visitation.” The court “use[d] its emergency powers pursuant to [section] 3420(c) of the Family Code to stay enforcement of the Montana judgment [from the state district court in Silver Bow County]” until June 29, 2015, pending results of Mother’s motion to set aside the default judgment in the Silver Bow County parenting case.

On May 27, 2015, DCFS filed an application and supporting declaration in the dependency court “pursuant to the case of *Wallis v. City of San Diego* and its progeny” requesting an order authorizing entry into Mother’s home for removal purposes. No immediate dependency court case was opened; the May 2015 materials stated that a petition under section 300 of the Welfare and Institutions Code² on behalf of G.L. was then anticipated, and that, in the opinion of the social worker, there was “probable cause” to believe that G.L. was a person described in section 300.

On May 27, 2015, the dependency court (Hon. Rudolph A. Diaz) signed findings and orders authorizing DCFS to remove G.L. from Mother’s home. On June 2, 2015, G.L. was removed from Mother’s home and released to Father’s custody.

On June 5, 2015, DCFS filed a juvenile dependency petition pursuant to section 300 on G.L.’s behalf.³ On the same day, the dependency court (Hon. Zeke D. Zeidler) detained G.L. and found that there were no reasonable means to protect her without removal from Mother’s custody. (§ 319.) The court released G.L. to Father’s custody, and ordered DCFS to initiate an investigation under the Interstate Compact on the Placement of

² All further undesignated section references are to the Welfare and Institutions Code.

³ The petition, as ultimately sustained, alleged the following: “[M]other . . . has a history of substance abuse, including alcohol, and is a current abuser of amphetamines, which renders [her] incapable of providing regular care for [G.L.]. On 05/07/2015, [Mother] had a positive toxicology screen for amphetamines. Said substance abuse by [Mother] endangers [G.L.]’s physical health and safety and places [her] at risk of serious physical harm and damage.”

Children concerning Father in the State of Kansas, where he was then residing.⁴ The court ordered Mother to be allowed monitored visits with G.L. through Skype or by telephone twice a week, and ordered that Father was not to be the monitor. Further, the court's orders indicated that it would "follow up regarding UCCJEA issues." Finally, the court ordered DCFS's jurisdiction report to address the possibility of terminating jurisdiction with a custody order in place.

On July 14, 2015, the dependency court issued an order stating: "Montana cedes jurisdiction to California." There are materials in the record indicating that the court had conferred with the state district court in Missoula County, Montana, and that it had agreed to cede jurisdiction to the California courts. We see nothing in the record to indicate that the dependency court had conferred with the state district court in Silver Bow County, Montana.

On October 14, 2015, the dependency court conducted a combined jurisdiction and disposition hearing. The court sustained the petition as noted above, and order G.L. removed from Mother's custody pursuant to section 361, subdivision (c). Further, the court found that the conditions which justified the assumption of jurisdiction under section 300 no longer existed and were not likely to recur in the event the court's supervision was withdrawn, and it terminated jurisdiction with a family law court order granting Father sole physical and legal custody of G.L. The court granted Mother monitored visits with G.L. through Skype.

Mother filed a timely notice of appeal.

⁴ The record shows that Father was then serving in the armed services.

DISCUSSION

I. The Arguments on Appeal

Mother's primary argument on appeal is that the dependency court's jurisdictional and dispositional orders are not supported by substantial evidence. DCFS has filed a letter brief in which it "concedes" that Mother's substantial evidence claim is well-taken. Further, DCFS argues the dependency court "did not have subject matter jurisdiction" to issue the orders that are challenged by Mother. DCFS states that the orders are "void," because all matters concerning the family should have been addressed under the UCCJEA in light of the child custody order issued in the Silver Bow County, Montana, state district court prior to the dependency court's intervention. Brian B. (Father) argues the dependency court "properly exercised emergency jurisdiction under the UCCJEA," but that the court should have *dismissed* the dependency proceedings before the time of the jurisdiction hearing. His conclusion is that any further proceedings involving the family, if appropriate, should be heard in state court in Montana. We reverse the dependency court's jurisdictional and dispositional orders because it appears that all concerned parties are in agreement — albeit with different takes — that the orders should not have issued.

II. Jurisdiction and Disposition

Mother contends the dependency court's jurisdictional and dispositional orders are not supported by substantial evidence. DCFS's letter brief filed on appeal concedes Mother's claim, but argues all of the court's orders are "void" in any event for lack of "subject matter jurisdiction." Father does not address whether there was evidence supporting the court's jurisdictional and dispositional orders; he says the dependency proceedings should

have been dismissed before the court issued its orders, in favor of custody proceedings in Montana. Because all concerned agree that the orders should not have issued, we reverse. We believe Father's reasoning takes the best course.

California adopted the UCCJEA effective January 1, 2000. (*In re C.T.* (2002) 100 Cal.App.4th 101, 106.) Montana adopted the UCCJEA in 1999 (codified under Title 40, Chapter 7, Montana Code Annotated). (*Stoneman v. Drollinger* (Mont. 2003) 314 Mont. 139, ___ ; 64 P.3d 997, 1000.) The UCCJEA comprises the exclusive statutory scheme for determining the proper forum for deciding child custody issues involving a child who is subject to a sister-state custody order. (See Fam. Code, § 3421; and see generally, *In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1348.)

A dependency action is a "child custody proceeding" subject to the UCCJEA. (*In re Jaheim B.*, *supra*, 169 Cal.App.4th at p. 1348, and cases cited therein.) "The purposes of the UCCJEA in the context of dependency proceedings include avoiding jurisdictional competition and conflict, promoting interstate cooperation, litigating custody where child and family have closest connections, avoiding relitigation of another state's custody decisions, and promoting exchange of information and other mutual assistance between courts of other states." (*In re Jaheim B.*, *supra*, 169 Cal.App.4th at p. 1348, citing *In re C.T.*, *supra*, 100 Cal.App.4th at p. 106.)

Under Family Code section 3424 of the UCCJEA, a California court, and this would include, of course, a dependency court, may exercise "temporary emergency jurisdiction if the 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. (*In re Jaheim B.*, *supra*, 169 Cal.App.4th at p. 1349; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1174-1175.) “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 [proceedings] exist.*’ (*In re Jaheim B.*, at pp. 1349-1350; see *In re Nada R.*, at p. 1175)” (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1097, italics added.)

Findings of fact justifying temporary emergency jurisdiction by the dependency court, i.e., outside the UCCJEA’s exclusive processes ordinarily applicable to a custody matter, should only be made after an evidentiary hearing of the need for such jurisdiction. (*In re C.T.*, *supra*, 100 Cal.App.4th at p. 107.) However, the child still may be detained by the dependency court prior to such a hearing for his or her protection. (*Id.* at p. 108, fn. 3.)

We agree with Father that, during a short period from roughly late May 2015 into early June 2015, the dependency court was presented with materials showing a need for the court to exercise temporary emergency jurisdiction — within the contemplation of the UCCJEA — over G.L. for her protection. At that time, DCFS had been presented with an application and supporting declaration to the court for an order authorizing G.L.’s removal from Mother’s home, followed days later by DCFS’s section 300 petition supported by the social worker’s detention report. Mother does not dispute that the materials submitted by DCFS were sufficient to support temporary emergency jurisdiction under the UCCJEA. Indeed, in challenging the dependency court’s ensuing jurisdictional and dispositional

orders on the merits for a lack of supporting substantial evidence, Mother implicitly recognizes that the dependency court properly assumed jurisdiction over G.L. initially.

At the time the juvenile court made its jurisdictional and dispositional findings and orders in October 2015, it believed it had continuing jurisdiction to do so. Indeed, at that hearing, when Mother's counsel remarked that there was a "contentious" family law case pending in Montana, the court stated: "Actually, it's not pending in Montana because Montana ceded jurisdiction to us." However, as DCFS correctly points out at page 14 of its letter brief, California did not have continuing jurisdiction under the UCCJEA because Montana had not actually ceded its jurisdiction over the child custody issues involving the family. Although the dependency court had communicated with the state district court in Missoula County, Montana, and that court had ceded jurisdiction to California, the child custody disputes apparently remained pending in Silver Bow County, Montana (the Butte court). That court had entered a judgment on December 19, 2014, awarding primary custody of G.L. to Father. It is that court's judgment which would be affected by any action taken by the local dependency court. DCFS's reports to the dependency court informed it of the Silver Bow County judgment.

We agree with Father that, under the UCCJEA, the dependency court's temporary emergency jurisdiction ceased when G.L. was placed in Father's custody pursuant to (1) the Silver Bow County judgment, and (2) the dependency court's initial detention orders in June 2015 consistent with the Montana judgment, and (3) the family law court's orders in April 2015 in case number GD056182 referring the matter to the Montana state district court in Silver Bow County. Temporary

emergency jurisdiction under the UCCJEA does not confer authority in a state court, including a California dependency court, to make a permanent custody disposition after the reasons underlying the dependency proceedings no longer exist. (*In re C.T.*, *supra*, 100 Cal.App.4th at p. 112; *In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1097.) Accordingly, prior to the jurisdictional hearing in the case involving G.L., the petition filed by DCFS on behalf of G.L. should have been dismissed, or otherwise disposed of, in favor of proceedings consistent with the UCCJEA.

In this case, a state court in Montana awarded physical custody of G.L. to Father in December 2014. Father then traveled to California and registered the judgment in the Los Angeles Superior Court in the family law court in Pasadena. After an evidentiary hearing on April 28, 2015, the family law court found “the State of Montana currently has jurisdiction over all Family Law proceedings including the issue of custody and visitation.” That court stayed enforcement of the Montana judgment until June 29, 2015, to allow mother time to file a motion in Montana to set aside the default judgment. While the dependency court properly stepped in to protect G.L. when DCFS initiated its investigation into Mother, the court should not have continued its jurisdiction once Father reunited with G.L. under an existing sister-state judgment governing child support.

III. Termination of Jurisdiction

Mother contends the dependency court erred in terminating its jurisdiction and that it should have continued supervision over G.L. pursuant to section 361.2, subdivision (b)(3). We disagree.

Section 361, subdivision (a)(1), provides: “*In all cases in which a minor is adjudged a dependent child of the [dependency] court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. . . .*” (Italics added.) Removal of a child from the custody of a parent is, of course, a recognized limitation authorized by section 361, subject to specific rules as to the burden of proof and the factors justifying removal. (§ 361, subd. (c).)

Section 361.2, subdivision (a), provides: “When [the dependency] court orders *removal of a child pursuant to Section 361*, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (Italics added.)

Section 361.2, subdivision (b), authorizes the dependency court to exercise three dispositional options for placing a child with a previously noncustodial parent upon the removal of the child from the custody of the other parent. The court may grant custody to the previously noncustodial parent and terminate

dependency jurisdiction. (§ 361.2, subd. (b)(1).) Or, it may order that a home visit be conducted within three months of the minor's new placement and that the results of that visit be provided to the court before it takes further action with respect to custody of the minor. (§ 361.2, subd. (b)(2).) Or, it may order that the previously noncustodial parent "assume custody" of the minor subject to the supervision of the juvenile court. (§ 361.2, subd. (b)(3).)

All three of the placement options noted above are predicated on a court's ruling finding adjudging a child to be a person described in section 300. Here, as we explained above, no jurisdictional findings under section 300 should have issued. In the absence of underlying jurisdictional orders adjudging G.L. to be child described in section 300, we see no path for continued dependency court jurisdiction over G.L. under section 361.2.

DISPOSITION

The dependency court's jurisdictional and dispositional orders are reversed; its initial detention orders essentially making emergency jurisdiction findings consistent with the UCCJEA are not reversed. The case is remanded with directions to the court to enter new and different orders declining to exercise dependency court jurisdiction over G.L.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.