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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.F., a Person Coming Under
the Juvenile Court Law.

B294320

(Los Angeles County
Super. Ct. No. 18CCJP04963)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Victor G. Viramontes, Judge. Dismissed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and David

Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court in this case exercised emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam. Code, § 3400 et seq.) to detain Nicole F. (Nicole) from her parents. When a Texas court ultimately decided to assert jurisdiction over the matter, the juvenile court dismissed the dependency petition without prejudice. We consider whether Nicole’s mother (Mother) can attack the juvenile court’s determination that it did not have continuing and exclusive jurisdiction under the UCCJEA even though she does not challenge the juvenile court’s dismissal of the petition.

I. BACKGROUND

Nicole was born in 2007. She resides in Texas with her father (Father). Pursuant to a 2014 order adjudicating parentage issued by the District Court of Tarrant County, Texas, Father has the exclusive right to designate Nicole’s primary residence. She completed her sixth grade school year in Texas and, as of August 2018, expected to begin her seventh grade school year in that state. Mother has lived in California for several years.¹

The order adjudicating parentage granted Mother six months of supervised weekly visits to be followed by longer, unsupervised visits, including extended visits during Nicole’s

¹ According to the Department of Children and Family Services (the Department), Mother acknowledged Father has primary custody of Nicole but claimed she (Mother) and Father “don’t really follow” custody orders.

summer vacation. Nicole spent about a month with Mother in California in July and August 2018.

Nicole came to the attention of the Department when Mother was arrested for burglary in early August 2018. Nicole was supposed to fly back to Texas the same day. The Department filed a juvenile dependency petition alleging Nicole was at risk of serious physical harm because she witnessed a “violent altercation” between Mother and Mother’s boyfriend and because Father did not adequately supervise Nicole and her older half-brother, who once “choked, kicked and punched” her. The family had not previously been the subject of any dependency investigations in California, but the Department obtained “closure letters” addressed to Father from the Texas Department of Family and Protective Services in 2010, 2014, and 2016. Those letters revealed allegations of neglect and abuse by Father and Nicole’s half-brother were administratively closed or “Ruled Out,” but there was “Reason to Believe” an allegation of “Emotional Abuse” by Mother.

The juvenile court detained Nicole from her parents pursuant to its emergency jurisdiction under the UCCJEA. Pursuant to the same exercise of emergency jurisdiction, the court ordered twice-weekly monitored visits for both parents.

At a later hearing, the juvenile court notified counsel for all parties it had conferenced with one Judge Nevarez in Texas: “[T]he judge informed me that Texas will be declining jurisdiction and so this case will remain in California. [¶] I will entertain further arguments after adjudication as the parties would like me to speak to the state of Texas further at that point [and] that is a possibility as I raised that possibility with the court. Again, it’s at the discretion of Texas whether to assert jurisdiction at that

point, but that is where we are with regard to the UCCJEA. So the adjudication will be moving forward.” Father’s attorney indicated she planned to file a motion “with respect to the UCCJEA and the issue of jurisdiction,” and the juvenile court invited the Department and Nicole’s counsel to respond.² The minute order memorializing the hearing states Texas “declines taking [j]urisdiction,” Nicole “remains detained in Shelter Care under the supervision of [the] Department,” and “[a]ll prior orders not in conflict shall remain in full force and effect.”

Roughly two weeks later, the Texas judge, Nevarez, issued a new order. Judge Nevarez found “that [the] Los Angeles Superior Court has exercised what appears to be emergency jurisdiction under the UCCJEA but . . . Texas is the home state of [Nicole]. The child has lived her entire life in Tarrant County, Texas and her presence in California was for a visitation with [Mother] pursuant to a Texas Court Order.” Judge Nevarez further found the California proceedings were based on “actions which occurred in California and . . . vague allegations made against [Father] . . . for events involving [his] son, which . . . occurred in Texas and were invest[igat]ed by Texas’ Child Protective Services. After investigation, the allegations against [Father’s] son and [Father] were ruled out or administratively closed.” Judge Nevarez authorized Father to

² Father’s attorney filed a “MOTION FOR CHANGE OF VENUE” the next week, which the Department and Nicole opposed. The juvenile court did not rule on this motion. Father also petitioned this court for an immediate stay of the jurisdiction and adjudication hearing. We denied the petition because he failed to make an adequate showing of urgency and because the necessity of an immediate stay was not yet ripe for decision.

“recover possession of [Nicole] . . . and return with [her] to Texas to participate in proceedings in this cause.”

At a subsequent progress hearing before the juvenile court in this state, the court informed the parties of Judge Nevarez’s order and said Judge Nevarez had notified the court he now would be asserting jurisdiction. Mother’s attorney stated his “strong objection to the court . . . conceding jurisdiction to Texas.” Counsel for the Department and Nicole favored dismissal of the dependency petition without prejudice, while counsel for Father advocated for a dismissal with prejudice. Asked whether he had any view as to whether the petition should be dismissed with or without prejudice, Mother’s attorney said he was “confident that Mother would support the petition being dismissed with prejudice.” The juvenile court dismissed the petition without prejudice.

Mother then filed a notice of appeal from what she called the juvenile court’s “ceding of jurisdiction to Texas.”

II. DISCUSSION

““It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” [Citations.]” (*People v. Mena* (2012) 54 Cal.4th 146, 152.) The statute governing appeals in dependency cases, which Mother cites as the basis for her appeal, is Welfare and Institutions Code section 395.³ Section 395 provides, in pertinent part, that “[a] judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any

³ Undesignated statutory references that follow are to the Welfare and Institutions Code.

subsequent order may be appealed as an order after judgment.” (§ 395, subd. (a)(1).) The “‘judgment’ referred to in section 395” is the disposition order. (*In re S.B.* (2009) 46 Cal.4th 529, 532; *In re T.W.* (2011) 197 Cal.App.4th 723, 729 [“The first appealable order in a dependency case is the dispositional order”].)

“As for *predispositional* orders, at least one such order is appealable: an order dismissing a dependency petition after an adjudication of the petition on the merits. [Citations.] Such a dismissal results from the juvenile court’s determination that the Department has failed to prove the allegations of the petition and the need for exercising juvenile court jurisdiction over the child or children named in the petition. An order dismissing a dependency petition is appealable because, ‘[u]nlike a jurisdiction order, which is followed by an adjudication of dependency and many possible subsequent orders, nothing follows a dismissal order: It is the end of the matter, and the child goes home.’ (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197[] fn. omitted.)” (*In re Michael H.* (2014) 229 Cal.App.4th 1366, 1374.)

Mother variously maintains her appeal is from the juvenile court’s “10-1-18 ceding of jurisdiction to Texas” (as stated in her notice of appeal), an “order terminating California’s jurisdiction” (her opening brief), “[t]he decision to transfer the case to Texas” (her opposition to the Department’s motion to dismiss the appeal), or a finding that California lacks jurisdiction (her reply brief). None of these are orders made appealable by section 395, and Mother expressly disclaims any challenge to the one order here that is at least arguably appealable under that statute—the juvenile court’s order dismissing the dependency petition. There

is accordingly no statutory basis for maintaining this appeal, and we shall order it dismissed.⁴

⁴ *Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276 (*Schneer*), on which Mother relies in an effort to save her appeal from dismissal, provides no support for her position. In that case, the Court of Appeal reversed a family court's order granting a parent's motion to quash and dismiss a child custody petition because it lacked jurisdiction to resolve the dispute under the UCCJEA. (*Id.* at p. 1289.) Mother frames the appeal in *Schneer* as a challenge to a "family court finding" regarding jurisdiction, apparently suggesting that such a finding may be reviewed separate and apart from an order of dismissal. But nothing in *Schneer* supports that reading. To the contrary, the Court of Appeal deemed the premature notice of appeal in that case to have been timely filed to challenge subsequent "orders . . . finding the court 'has no jurisdiction' over the child custody dispute and dismissing the case 'in its entire[t]y for lack of jurisdiction.'" (*Id.* at p. 1283.)

DISPOSITION

Mother's appeal is dismissed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.