

Filed 12/21/18 In re C.M. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.M. et al., Persons
Coming Under the Juvenile
Court Law.

B287846
(Los Angeles County
Super. Ct. No. DK19188D)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

G.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County. Natalie Stone, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, G.M. (father) challenges the juvenile court's jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA or Act) (Fam. Code, § 3400 et seq.)¹ to issue a final custody order as to his children. Both father and his wife A.L., who is the mother of his children (mother), are from Honduras. Father claims the juvenile court improperly exercised subject matter jurisdiction here because Honduras was the children's "home state" for purposes of jurisdiction under the Act and, despite multiple good faith efforts below to reach a Honduran court, no Honduran court declined to exercise its jurisdiction over this matter. Father does not argue the juvenile court could never have jurisdiction here. Rather he claims the matter must be remanded so that the court can try again to contact a Honduran court to inquire whether that court wishes to exercise its jurisdiction over the case. In the alternative, father claims the case should be remanded so that the juvenile court can determine in the first instance whether Honduras is in fact the children's "home state."

As discussed below, we are not persuaded by father's arguments and we affirm.

¹ Subsequent undesignated statutory references are to the Family Code.

BACKGROUND

1. The Family

Mother and father were born, raised, and married in Honduras. Their two older children, a daughter, K.M., and a son, C.M., were born in Honduras. In approximately 2004, father moved to the United States. One year later, mother joined him, while K.M. and C.M. remained in Honduras. The two younger children, another daughter, E.M., and another son, V.M., were born in the United States. Some years later, mother returned to Honduras with the two younger children, and one year after, father rejoined the family in Honduras.

More recently, in September 2014, father moved back to the United States and has lived in the United States since then. In April 2016, mother and the two older children, K.M. (then 14 years old) and C.M. (then 11 years old), joined father in California and sought asylum in the United States. In August 2016, approximately five weeks before these dependency proceedings began, E.M. (then 10 years old) and V.M. (then 8 years old) joined their family in California. Mother said she left Honduras with the children “to escape the dangers of the village they lived in.” Mother explained “there is a lot of violence, gangs, and drugs in the village and she did not want her children to become involved in any of it.”

2. Dependency Proceedings Begin

On August 31, 2016, after the older daughter, K.M., confided in mother that father had sexually abused her for years in Honduras as well as in California, the Department sought and the juvenile court ordered the children removed from father. A couple of weeks later, on September 12, 2016, the Department filed a Welfare and Institutions Code section 300 petition on

behalf of the children (petition). The petition alleged 14 counts related not only to father's alleged sexual abuse of K.M., but also to the parents' alleged inappropriate physical discipline of the children and the parents' history of violent altercations with each other.

That same day, the juvenile court ordered the children detained from father and placed with mother. The court issued a temporary restraining order against father, protecting mother and the children. The court also ordered the Department to address any potential UCCJEA issues and to "make contact with authorities in Honduras."

3. Efforts to Contact a Court in Honduras

One month later in October 2016, the Department reported on its attempts to contact either a dependency court or child protection agency in Honduras. The Department explained an investigator had contacted the Honduran consulate in Los Angeles but was unable to speak with anyone at the consulate because the calls were disconnected repeatedly. The investigator also tried unsuccessfully to locate information on the Internet. In addition, the investigator called the paternal grandmother in Honduras and left a message for her. The investigator also contacted the Department's "International ICPC Coordinator," who provided an e-mail address for Pablo Ordonez, the Consul General of Honduras. The investigator e-mailed Mr. Ordonez, but as of mid-October 2016, the investigator had not heard from him. The juvenile court ordered the Department "to continue making effort to contact consulates."

The juvenile court also directed court staff to contact Honduran authorities. Court staff attempted to contact the

Honduran consulates in Los Angeles, Chicago, and Washington D.C. No responses were received.

On October 20, 2016, the juvenile court judge presiding over the matter sent a letter to Mr. Ordonez at the Los Angeles offices of the Consulate General of Honduras. In her letter, the court explained the UCCJEA required her “to contact the family law or child abuse court in Honduras that would have authority over” the family. She explained further that, “[t]o determine whether Honduras will assert its jurisdiction, California must contact and communicate with the appropriate Honduran court. If the Honduran court declines jurisdiction, California will assert its jurisdiction and hear the case.” Finally, the court stated she needed to speak with a Honduran judge before November 14, 2016, which was the next scheduled hearing, “to determine whether the judge in Honduras wants to handle the case or will decline jurisdiction.” She asked for the Consulate’s help “to give us the contact information of the relevant court.” The juvenile court received no response to this letter.

At the adjudication hearing held November 14, 2016, the juvenile court recited the efforts made by the Department, court staff, and the judge herself to contact a Honduran court. The court also noted the fact that all such efforts were met with silence. Thus, the juvenile court determined that, to the extent Honduras had jurisdiction, it had impliedly ceded its jurisdiction over the matter: “The court finds that although Honduras may have been the home state for some or all of the minors, as defined under the UCCJEA, that Honduras has impliedly ceded jurisdiction to this court by failing to provide any indication that they wish to assert jurisdiction over this matter.” Citing *In re M.M.* (2015) 240 Cal.App.4th 703, the court concluded California

had jurisdiction to hear the case and proceeded to adjudicate the matter. No one objected to the court's jurisdictional finding.

4. Adjudication, Reunification, and Termination of Jurisdiction

After finding it had jurisdiction, the juvenile court dismissed eight counts of the petition and sustained the remaining six counts as amended. On December 15, 2017, after approximately one year of family maintenance and reunification services, the juvenile court terminated its jurisdiction with a final custody order and judgment. The court ordered sole legal and physical custody of K.M. to mother. With respect to the three younger children, the court ordered physical custody to mother and joint legal custody to mother and father. Father was granted limited visitation rights. The restraining order remained in place with respect only to the two daughters, K.M. and E.M.

5. Appeal

Father appealed the juvenile court's December 15, 2017 custody order as to his three younger children. He did not appeal any court orders as to his older daughter, K.M.

DISCUSSION

1. The UCCJEA

The UCCJEA applies to dependency proceedings and “provides the exclusive means for determining the proper forum and subject matter jurisdiction for child custody proceedings.” (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 516 (*Aiden L.*); §§ 3402, subd. (d), 3421, subd. (b).) “The UCCJEA is designed to avoid jurisdictional conflicts between states and relitigation of custody decisions, promote cooperation between states, and facilitate enforcement of another state's custody decrees.’” (*Aiden L.*, at p. 516.)

The UCCJEA defines a child’s “home state” as “the state in which a 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.” (§ 3402, subd. (g).) “A period of temporary absence of any of the mentioned persons is part of the period” used to determine someone’s “home state” under the Act. (*Ibid.*) Under the UCCJEA, a foreign country is treated as a “state” as that term is used in the Act. (§ 3405, subd. (a).) However, “if the child custody law of a foreign country violates fundamental principles of human rights,” that country need not be treated as a state for purposes of the UCCJEA. (§ 3405, subd. (c).)

Under the UCCJEA, “ ‘California courts have jurisdiction over child custody determinations only if the child’s home state is California, or the child’s home state does not have jurisdiction or declined jurisdiction in favor of California.’ ” (*Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1287 (*Schneer*)). More particularly, section 3421 provides the following four exclusive grounds for asserting jurisdiction under the UCCJEA:

“(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

“(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child’s parents, or the child and at least one parent or a person acting as

a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

“(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

“(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).” (§ 3421, subd. (a).)

In addition to exercising jurisdiction under section 3421, a juvenile court may exercise temporary emergency jurisdiction under section 3424. The court “has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or 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.” (§ 3424, subd. (a).) However, when a court has exercised such temporary emergency jurisdiction, “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.” (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 518.)

“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.” (*Aiden L.*, *supra*, 16 Cal.App.5th at pp. 518–519.) Having attempted to contact the home state, however, the juvenile court need not wait

endlessly for an express response. “[W]hen a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding, including inaction *or* . . . by refusing to even discuss the issue of jurisdiction despite myriad good faith attempts to do so by the juvenile court, . . . such inaction or refusal is tantamount to a declination of jurisdiction by the home state on the grounds California is the more appropriate forum under subdivision (a)(2) of section 3421.” (*In re M.M.*, *supra*, 240 Cal.App.4th at p. 717.)

2. Standard of Review

When the facts are disputed, we review the juvenile court’s jurisdictional finding under the UCCJEA for substantial evidence. (*Schneer*, *supra*, 242 Cal.App.4th at p. 1286; *In re A.C.* (2017) 13 Cal.App.5th 661, 669.) “When conducting a substantial evidence review, we 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 family court’s findings. [Citation.] The family court’s resolution of conflicts in the evidence and credibility assessments are binding on this court.” (*Schneer*, at pp. 1286–1287.)

However, when the facts are not disputed, “the ultimate determination of jurisdiction is a question of law we review *de novo*.” (*Schneer*, *supra*, 242 Cal.App.4th at p. 1286, fn. 5; *In re A.C.*, *supra*, 13 Cal.App.5th at p. 670.) Similarly, statutory construction is a question of law, and we review the juvenile court’s interpretation of the UCCJEA *de novo*. (*Schneer*, at p. 1287; *In re M.M.*, *supra*, 240 Cal.App.4th at p. 715.)

3. Waiver

Father concedes he failed to object below to the juvenile court's exercise of jurisdiction. Despite his failure to object below, however, father may properly raise the issue of subject matter jurisdiction on appeal. "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." (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 516; *In re A.C.*, *supra*, 13 Cal.App.5th at p. 668.) The Department does not argue otherwise.

4. The juvenile court properly exercised subject matter jurisdiction under the UCCJEA.

Father argues "substantial evidence does not support the juvenile court's finding that a Honduran court declined to exercise jurisdiction within the meaning of Family Code section 3421, subdivision (a)(2). Without *evidence* that a Honduran court had knowledge of the current proceedings, it was impossible for the juvenile court to conclude that [a Honduran court] declined to exercise jurisdiction." Thus, father does not exactly assert that the juvenile court lacked subject matter jurisdiction. Rather, we interpret father's position more precisely to be that the juvenile court had not perfected or properly confirmed California's jurisdiction over these dependency proceedings. As a result, father claims we must remand the case so that the juvenile court again can attempt to prompt a satisfactory response directly from a Honduran court. In the alternative, father claims we should remand the case so that the juvenile court can determine whether Honduras is in fact the children's home state. As discussed below, we disagree on both counts.

a. “Home State”

In determining jurisdiction under the UCCJEA, the juvenile court first must determine the children’s “home state.” As noted above, “home state” is defined as “the state in which a 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.” (§ 3402, subd. (g).) Given this definition, it is undisputed that California is not the children’s home state. At the time these proceedings began, none of the children had lived in California for six consecutive months. The two older children moved to California four months before these dependency proceedings began. And the two younger children moved to California five weeks before the proceedings began.

Under these facts, it is similarly apparent the children had not been living in Honduras for six consecutive months when these proceedings began. Thus, although the juvenile court and the parties assumed without deciding that Honduras was the children’s home state for purposes of jurisdiction under the UCCJEA, the issue is not so clear.² None of the children lived in

² In its brief on appeal, the Department contends for the first time that neither the juvenile court nor we need treat Honduras as a state for purposes of the UCCJEA because “[i]t is a country with its own set of laws, and its own method of implementing those laws. . . . [And] it has a record of being non-compliant with the terms of the Hague convention.” Because the issue was not raised below, it is not supported by legal authority, and there is no evidence addressing it in the record on appeal, we decline to address it here. (*In re A.C.*, *supra*, 13 Cal.App.5th at p. 672.)

either Honduras or California for six consecutive months immediately before the start of these proceedings.

However, as father correctly points out and as noted above, in determining whether the children lived in one place consecutively for six months immediately before commencement of these proceedings, the UCCJEA includes in those six months any “period of temporary absence” from the state. (§ 3402, subd. (g).) Thus, for example, if a child leaves his or her home state for a three-week vacation with the intent to return home, those three weeks are included in the time the child has lived in the home state.

Father argues for the first time on appeal that, at the time these proceedings began, the children’s absence from Honduras was a “period of temporary absence” only. Thus, he contends, their time in California should be included in calculating their total consecutive time in Honduras before commencement of these proceedings. Under father’s analysis, Honduras would easily qualify as the children’s home state because they had lived there for years before moving to California and before these proceedings began. In making this argument, father relies on his assumption that the two older children and mother would not succeed on their claims for asylum and, therefore, might be removed from the United States. If that happened, father argues, mother probably would return to Honduras with all four children. Although father’s scenario might come to pass, it is pure speculation. Moreover, the juvenile court never addressed whether the children were absent only temporarily from Honduras for purposes of determining their home state and the court’s subject matter jurisdiction. The Department does not address this issue.

Although the issue of “temporary absence” was not raised or addressed below, we conclude it is unnecessary to remand so that the juvenile court may consider the issue in the first instance. If after a consideration of the relevant facts, the juvenile court were to determine that Honduras was not the children’s home state, the court properly exercised its subject matter jurisdiction under section 3421, subdivision (a)(4), which applies when “[n]o court of any other state would have jurisdiction” under section 3421.³ If on the other hand the court were to determine Honduras was the children’s home state, we conclude (as discussed in detail below) the court properly exercised its jurisdiction under section 3421, subdivision (a)(2) (subdivision (a)(2)). Thus, under either scenario, the juvenile court correctly exercised subject matter jurisdiction and remand is unnecessary.

b. Subdivision (a)(2)

In relevant part, subdivision (a)(2) provides that a court of this state has jurisdiction in a child custody proceeding if “a court of the home state of the child has declined to exercise jurisdiction.”⁴

³ Father asserts that if Honduras is not the home state, the juvenile court would have to conduct an extended forum analysis under subdivision (a)(2). We do not interpret that subdivision to require such an analysis.

⁴ In full, subdivision (a)(2) states: “(a) Except as otherwise provided in section 3424 [addressing temporary emergency jurisdiction], a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: [¶] . . . [¶] (2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that

Father claims that because no one below succeeded in contacting a Honduran court directly, it was impossible for a Honduran court to decline to exercise jurisdiction. As a result, father argues the juvenile court acted without jurisdiction and must try again to contact a Honduran court. As discussed below, we disagree with father's interpretation of the facts and conclude the juvenile court properly exercised subject matter jurisdiction.

In re M.M., *supra*, 240 Cal.App.4th 703, and *In re A.C.*, *supra*, 13 Cal.App.5th 661, are instructive. *In re M.M.* involved a California dependency case regarding a child whose home state was Japan. (*In re M.M.*, at p. 706.) The juvenile court there tried to contact a family court in Japan by calling, e-mailing, and sending by certified mail a written letter to court representatives, including judges. (*Id.* at pp. 709–711.) Japanese court personnel repeatedly refused to address the jurisdiction issue and instead stated it was inappropriate for the Japanese court to communicate with the juvenile court regarding jurisdiction. (*Id.* at pp. 710–711.) Eventually, after some time had passed and the juvenile court had decided to exercise permanent jurisdiction over the case, the juvenile court received a letter from a judge on the Supreme Court of Japan, stating Japanese judges were not permitted to discuss and would not discuss jurisdiction of specific

this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." We are concerned here only with that portion of subdivision (a)(2) quoted in the text above.

cases with judges of other states. (*Id.* at pp. 713–714.) The mother appealed the juvenile court’s orders in the case, arguing in part that the court lacked subject matter jurisdiction. (*Id.* at pp. 705, 714.)

On appeal, the *In re M.M.* court affirmed the juvenile court’s exercise of jurisdiction. The Court of Appeal noted, “the statutory scheme is ambiguous regarding how a home state and any other potential forum state may decline jurisdiction in order to confer jurisdiction under section 3421, subdivision (a)(2).” (*In re M.M.*, *supra*, 240 Cal.App.4th at p. 716.) The court expressed concern over and a desire to avoid creating “the real potential to leave a child in a child custody proceeding in a state of limbo between two forums,” which the court remarked would be “antithetical to our dependency scheme and the public policy underlying it, which favors the prompt resolution of dependency proceedings.” (*Id.* at pp. 716, 717.) Finding the juvenile court was not required to wait for an express order from Japan stating California was the more appropriate forum, the *In re M.M.* court concluded “that when a home state declines jurisdiction in any manner that conveys its intent *not* to exercise jurisdiction over a child in connection with a child custody proceeding, including inaction *or*, as in the instant case, by refusing to even discuss the issue of jurisdiction despite myriad good faith attempts to do so by the juvenile court, that such inaction or refusal is tantamount to a declination of jurisdiction by the home state on the grounds California is the more appropriate forum under subdivision (a)(2).” (*Id.* at p. 717.)

In re A.C., *supra*, 13 Cal.App.5th 661, expanded on the analysis of *In re M.M.* *In re A.C.* involved a California dependency case regarding two boys whose home state was

Mexico. (*In re A.C.*, at p. 664.) In addition to making several unsuccessful telephone calls to Mexican courts, the juvenile court in *In re A.C.* also “sent two e-mails to Mexico courts inquiring whether they declined to exercise jurisdiction over the children’s cases in favor of California’s assumption of jurisdiction.” (*Ibid.*) The juvenile court never received a response from Mexico and proceeded to exercise subject matter jurisdiction over the case. (*Id.* at p. 666.) Eventually, the juvenile court terminated the mother’s parental rights to her two sons, and the mother appealed. (*Id.* at p. 668.)

On appeal, the *In re A.C.* court rejected the mother’s argument that the juvenile court should have demonstrated “it verified and authenticated that its e-mails to Mexico authorities were, in fact, sent to the correct e-mail addresses and appropriate judicial authorities in Mexico and that those e-mails were actually received by those authorities.” (*In re A.C.*, *supra*, 13 Cal.App.5th at p. 671.) The court held the mother had waived her argument because it was procedural in nature, was not raised below, and was not supported by authority. (*Id.* at pp. 672–673.) In addition, although the record was devoid of evidence showing the Mexico courts actually had received the juvenile court’s correspondence, the Court of Appeal found all intendments and presumptions supported an inference that the authorities in fact had received the correspondence. (*Id.* at p. 673.) Moreover, the *In re A.C.* court concluded that “the Mexico judicial authorities’ inaction by failing to timely respond to the [juvenile] court’s e-mails was tantamount to their declination to exercise jurisdiction over the children’s cases on the ground California was the more appropriate forum.” (*Id.* at p. 675.)

In re M.M. and *In re A.C.* are similar to this case in that they both involve a situation where, although the juvenile court made inquiries as to whether the home state court would exercise or decline jurisdiction, the home state court did not answer those inquiries. However, this case differs from *In re M.M.* and *In re A.C.* in that here it is undisputed the inquiries were directed not to a specific court in the home state, but instead to government officials of the home state who it was reasonably believed were in a position to help.

In line with the reasoning of both *In re M.M.* and *In re A.C.*, we conclude that, given the facts of this case, the juvenile court properly exercised jurisdiction under the Act. The court itself made a good faith effort to contact a Honduran court by writing to the Consul General of Honduras explaining the circumstances and asking for help in locating and contacting the proper Honduran court. In addition, the Department and juvenile court staff made multiple good faith efforts to contact a Honduran court. All efforts were met with silence. First, although the juvenile court did not expressly state so on the record, we presume the court inferred either that the Honduran officials were authorized to speak for the Honduran courts or that the Honduran officials alerted an appropriate Honduran court to at least one if not more of the jurisdictional inquiries. (See *In re A.C.*, *supra*, 13 Cal.App.5th at p. 673 [presuming the juvenile court inferred that its communications were in fact received by home state court].) Second, based on the utter silence received in response to the many inquiries made below, it was proper for the juvenile court to conclude the Honduran court implicitly ceded jurisdiction. (*Id.* at p. 675 [failure to respond to inquiries is tantamount to a declination to exercise jurisdiction]; *In re M.M.*,

supra, 240 Cal.App.4th at p. 717 [home state may convey its intent not to exercise jurisdiction through inaction or a refusal to discuss the issue].) Third, by exercising jurisdiction, the juvenile court avoided trapping the children in “a state of limbo between two forums” and instead encouraged a prompt resolution of these proceedings, which is a favored result under our dependency scheme. (*In re M.M.*, at pp. 716, 717.)

Thus, we do not agree with father when he states that, “[w]ithout actually communicating with a court of the home state,” it was “impossible” for the juvenile court to conclude a court of the home state had declined to exercise jurisdiction. Instead, we conclude that, given the facts of this case and despite the lack of affirmative evidence in the record that a Honduran court knew of these proceedings, the juvenile court properly could exercise jurisdiction under subdivision (a)(2).

DISPOSITION

The December 15, 2017 order is affirmed.
NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.