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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARLOS G.,

Defendant and Appellant.

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B235996

(Los Angeles County  
Super. Ct. No. CK80779)

APPEAL from an order of the Superior Court of Los Angeles County,  
Donna Levin, Referee. Affirmed.

Christopher R. Booth for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County  
Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Carlos G. (Father) appeals from a juvenile court order sustaining allegations of a dependency petition and making jurisdictional findings pursuant to Welfare and Institutions Code section 300, subdivision (c).<sup>1</sup> A Tennessee court had ordered Father to have custody of his daughter, Alexis G., but after that court declined jurisdiction over a dependency petition filed with regard to Alexis G. in Los Angeles County Superior Court, the juvenile court properly assumed jurisdiction. We affirm the jurisdictional findings and dispositional order of the juvenile court.

## FACTUAL AND PROCEDURAL HISTORY

Father and Georgette G. (Mother) had divorced in Maury County, Tennessee on June 26, 2008. The order granting a divorce, signed by Judge Jim T. Hamilton, designated Father as the primary residential parent of Alexis and awarded Mother additional shared parenting time. Pursuant to a May 29, 2009, letter of agreement, Mother and Father agreed to allow Mother to have Alexis in California from May 30 to June 21, 2009.

On June 26, 2009, the Tennessee court ordered Mother to return Alexis to Tennessee within 72 hours. A July 27, 2009, order reflected the Tennessee court's finding that Mother was in willful contempt of the court and ordering an attachment issue for Mother and ordering Mother to serve a six-month sentence for willful contempt. On August 13, 2009, the Los Angeles County Superior Court issued an order stating that Alexis would be returned to Tennessee accompanied by Mother or other maternal relative and an adult from Father's family, and that Tennessee would recall the arrest warrant for Mother and would dismiss the contempt citation to facilitate Mother's return to Tennessee with Alexis. On September 15, 2009, the Tennessee court issued an order stating that all future proceedings would be conducted in Chancery Court of Maury County, Tennessee; that Alexis's guardian ad litem, Mr. Wes Bryant, would implement

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<sup>1</sup> Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

an expedited psychiatric/psychological evaluation of Alexis; that Mother would return Alexis not later than September 15, 2009, and after returning to Tennessee Alexis would stay with Mother; and that prior orders issued with the contempt petitions were vacated, with the request that the District Attorney withdraw and dismiss pending criminal warrants against Mother. The Tennessee District Attorney General recalled that warrant on October 6, 2009.

On September 22, 2009, the Los Angeles County Superior Court issued a temporary restraining order against Father protecting Mother and Alexis, and reissued a temporary restraining order against Father on October 26, 2009. After a telephonic conference between the Los Angeles County Superior Court and the Chancery Court of Maury County, Tennessee on December 14, 2009, Los Angeles County Superior Court Judge Susan K. Weiss ordered that California had no further jurisdiction and further proceedings should be heard in the Tennessee court, dissolved the temporary restraining order, and dismissed the case.

On January 8, 2010, the Tennessee court ordered Alexis to return to Tennessee on January 12, 2010, accompanied by first cousin Nicole S. Her guardian ad litem advised that Alexis be allowed to stay in California to finish school and that she could inflict self harm if forced to return to Tennessee, where she had previously threatened suicide in response to court orders that she return to Father in Tennessee.

On January 12, 2010, LAX airport police referred 12-year-old Alexis to the Department of Children and Family Services (DCFS), reporting that she was highly distraught and suicidal regarding boarding a plane to return to Father in Tennessee. Alexis alleged past sexual abuse by Father. She was hospitalized at Del Amo Hospital in Torrance for a mental health assessment.

Interviewed at the hospital, Alexis stated that she was hospitalized because she threatened to kill herself. Mother took her to the airport to return to Father. Although she did not want to return to Tennessee, she planned to board the plane so her Mother would not get in trouble for violating a court order, but when she saw her cousin Nicole S. at the airport ready to accompany her to Tennessee, Alexis said she could not do it,

ran, and could not breathe. Tearfully Alexis begged the CSW not to make her go back, and said if she went back she would kill herself. When asked why she did not want to return to Father in Tennessee, Alexis said Father had done bad things to her. Alexis said that on numerous occasions when she was between the ages of five and 11, Father told her to sit on his lap when he was naked. Sometimes she complied and sometimes she ran to her room, crying. Alexis said Father made her watch pornographic movies with him. Alexis said that five or six times when she was nine years old, Father told her his back hurt and made her stand on his buttocks when he was naked. Alexis also said that Father hit her on the back with a pole from a shutter shade when she did not do what he wanted. These incidents occurred about twice a week.

Alexis also reported that Father tried to suffocate Mother by sitting on her until she could not breathe. Alexis said she wanted to live with Mother.

Alexis had been in Los Angeles to be with Mother since June 2009. The Tennessee court ordered her to return to Father. Alexis stated that she could not stand the thought of returning to Father, so she decided to kill herself, and she was about to use a razor to cut herself when her half-sister entered the room and stopped her.

Mother was interviewed. She stated that Alexis repeatedly stated she would kill herself if she had to return to Father's care. Alexis originally came to Los Angeles in May 2009 for a three-week visit, but had panic attacks and threatened suicide when it was time for her to return to Tennessee. Since that time, the Tennessee court continued to order Alexis's return, but each time the return trip became imminent, Alexis threatened to hurt herself. Mother said that during their marriage, Father physically abused Alexis, Mother's older children from a prior relationship, and Mother, whom he tried to suffocate on numerous occasions while under the influence of alcohol.

Father denied these allegations and said he and Alexis got along well and that Mother was influencing Alexis against him.

Dr. Marsha Landau, who had treated Alexis for some time, was very concerned about Alexis's mental health and believed that if she were forced to return to Tennessee, Alexis might act on her suicidal ideation. Dr. Landau believed that Alexis's threats and disclosures about Father's sexual abuse were credible. She stated that Alexis was truly in despair and was terrified to return to Father in Tennessee.

A CSW conferred with Alexis's guardian ad litem, Mr. Bryant, who reported that Alexis was ordered to return to Tennessee against his advice. He saw no indication that Alexis was being coached. Bryant stated that father was an admitted molester and admitted to Alexis that he molested his siblings. Bryant did not think Alexis should be returned to Tennessee based on her statements that she would commit suicide if returned and because it would interrupt her schooling.

On January 25, 2010, Judge Hamilton of the Maury County, Tennessee Chancery Court ordered that Father was granted temporary and exclusive custody for the purpose of bringing Alexis from Los Angeles to Columbia, Tennessee, that Father be the sole decision maker regarding mental and physical health care decisions for Alexis, and that Mother have no contact with Alexis until she returned to Tennessee.

On January 26, 2010, the DCFS filed a section 300 petition, alleging that Alexis was a person described by subdivisions (a) [child suffered or a risk child will suffer serious physical harm inflicted nonaccidentally by a parent], (b) [child suffered or a risk child will suffer serious physical harm or illness resulting from parent's failure or inability to supervise or protect child, or by parent's inability to provide regular care due to the parent's mental illness, developmental disability, or substance abuse], and (d) [child has been sexually abused or there is risk child will be sexually abused, and parent has failed to protect the child from sexual abuse].

In a January 26, 2010, declaration Mother stated that after Alexis arrived for a three-week visit on May 30, 2009, Alexis became reluctant to return to Father and began revealing Father's sexually inappropriate behavior toward her. Mother said that Father told Alexis, 10 years old at the time, that he molested his sisters when they were four and five years old and continued doing so until his early 20's. Mother made four attempts to

board Alexis on an airplane back to Tennessee. The first attempt caused a severe panic attack and threats of suicide and running away from the terminal. On the second attempt, Alexis refused to get out of the car. The third attempt resulted in an attempted suicide, after which Alexis was admitted to Alhambra Mental Hospital for Children, medicated, and held for nine days. The fourth attempt was on January 12, 2010, after which Alexis was hospitalized for eight days.

Alexis also submitted a declaration, stating that she feared Father would kidnap her, take her to Tennessee, and she would never see her mother again. She said she lived in constant fear of Father. She said Father told her he molested his sisters when he was 15 years old and they were four and five years old, which continued until he was in his twenties. When she lived with him in Tennessee, Father made her sit on his lap and watch pornography. Alexis stated that she would rather die than be forced to return to Tennessee to live with Father, and when she was told she had to go to the airport she felt like she was going to die, her heart pounded so she could not breathe, she could not stop crying, and her head and stomach hurt so severely that it made her dizzy.

At a January 26, 2010, hearing, the juvenile court made emergency findings that Alexis was a person described by section 300 and that continuing to live in Father's home was contrary to Alexis's best interest, and ordered Alexis to remain with Mother.

On January 27, 2010, Father filed a motion requesting that the juvenile court recognize the UCCJEA<sup>2</sup> findings made on December 14, 2009, giving Tennessee exclusive subject matter jurisdiction over issues raised in this juvenile court filing, to enforce orders of the Tennessee court, and to take necessary actions to return Alexis to Tennessee and to prevent Mother's further contact with Alexis until she is returned to Tennessee. While recognizing that the UCCJEA governed the case, the juvenile court stated that it could take emergency jurisdiction when it appeared that the child was in danger. The juvenile court made emergency detention findings and orders against Father,

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<sup>2</sup> Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §§ 3400-3465).

ordered temporary custody vested with the DCFS, and ordered Alexis released to Mother pending the next hearing.

The DCFS filed a first amended section 300 petition on February 1, 2010, which added the allegation pursuant to subdivision (c) [child suffers or risks suffering serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others as a result of parent's conduct] that Mother and Father abused Alexis, Father sexually and physically abused Alexis, continued conflict between Mother and Father, Mother's failure to return Alexis to Father's legal custody when ordered by the court to do so, and Alexis witnessing domestic violence between the parents. The petition alleged that the parents' emotional abuse of Alexis resulted in her severe anxiety, depression, suicidal ideation, and two hospitalizations in the past year and placed Alexis at risk of suffering serious emotional damage and suicide.

The DCFS provided a report from Alexis's psychologist, Dr. Marcia D. Landau, who stated that Alexis had been under her care since June 2009. Dr. Landau reported that Alexis was clinically depressed and on Selexa, an antidepressant, since July 2009 because of Father's sexual molestation and because she spent the previous seven months living in terror of being forcefully returned to Tennessee, where she was sure she would be remolested and feared other retaliation by Father. In the previous two months Alexis had become more suicidal and told Landau she would kill herself if forced to return to Tennessee. Dr. Landau believed her threats and was sure Alexis would carry them out. Alexis was hospitalized twice in the previous seven months, first for making a suicide attempt and a second time when she made her intentions clear to airport police. Dr. Landau stated that Alexis was a sweet, non-manipulative child who was genuinely terrified of Father, and reasoning and therapy had not been able to diminish this fear as long as she felt she would be returned to him.

Dr. Landau strongly recommended that Alexis not be forced to return to Tennessee, stated that she was at high risk of suicide if she returned, and believed she would not make it to the airport, as Alexis believed that death was preferable to returning to her abuser. Dr. Landau stated that Alexis needed treatment by a professional skilled in

the treatment of sexually molested preadolescents and healing could begin if she was allowed to stay in California.

In the February 1, 2010, hearing, Referee Donna Levin stated that she talked with Judge Hamilton of Tennessee, who had granted Father sole physical and legal custody of the child. Referee Levin stated that Mother did not have a right to custody, and based on the first amended petition, it was not appropriate to have a further detention hearing. The juvenile court found that a prima facie case for detaining Alexis and showing that she was a person described by section 300, subdivisions (a), (b), and (d) was established, and ordered Alexis detained from Mother with temporary custody vested with the DCFS in shelter care. The juvenile court stated that it would retain emergency jurisdiction until the next hearing on March 2, 2010. Referee Levin also stated that Judge Hamilton of the Tennessee court stated that he wished to continue jurisdiction over Alexis.

The DCFS filed a jurisdiction/disposition report for the March 2, 2010 hearing. It stated that Alexis was placed in a residential group home. A DCFS dependency investigator interviewed Alexis, who stated that Father struck her back with a stick because she would not watch pornography with Father when she was 9, 10, or 11 years old. Alexis said Father hit her hard on the back four times. Alexis's adult half-sister, Marian R., stated that Father hit her with a curtain rod, quoting from the Bible, "do not spare the rod," and hit them if they did not listen, talked back, did not manage the budget, watched his television, or complained to Mother about what he was doing. Alexis's adult half-sister Nicole G. said Father hit all of the daughters with a rod or stick. She saw him hit Alexis's lower back when she very little.

The petition alleged domestic violence between Father and Mother, in which Father struck Mother's head with a rod, inflicted bruising to Mother's body, and attempted to suffocate Mother by sitting on her, and that Mother stabbed Father's back. Alexis stated that Father screamed at Mother, may have struck her with a rod, and Alexis saw Father lie on Mother when he was drunk. Alexis stated that it was not true that Mother stabbed Father, who made up the allegation that Mother stabbed him and told the police that Mother did it so she would get arrested. Mother also denied stabbing Father,



and said that Father hit the children with a rod and hit her in her head with his hand, causing bruising on her head and bad vision. Adult half-sister Nicole G. stated that she saw Father hit Mother on the head with his hand and leave bruises, and after arriving home drunk took Mother into a van and told her was going to kill her. Nicole G. saw Father, who weighed 300 pounds, sit on Mother. Nicole G. said the allegation that Mother stabbed Father was false.

The petition alleged that Father forced Alexis to sit on his genitals and to stand on his buttocks while he was naked. Alexis stated that during 2004-2008, twice a week Father made her sit on his lap when he did not have clothes on, and he lay on the floor on his stomach and told her to step on his back while he had no clothes on. If Alexis did not do it Father would “get the rod.”

The petition alleged that Father’s history of alcohol abuse rendered him incapable of providing care for Alexis. Alexis said that Father took her to his AA meetings because of his drinking, and he got drunk a lot. Marian R. stated that Father was an alcoholic, drank beer before work, and drank when he came home from work. Father also told her that he used to use cocaine and marijuana.

The petition also alleged that Father and Mother emotionally abused Alexis.

Hospital records from June 29 to July 6, 2009, stated that Alexis was diagnosed with major depressive disorder. Her sister found Alexis with razor blades in the process of cutting her wrist. Alexis said, “I was trying to kill myself, cut myself.” Alexis was fearful of having to return to her father, was depressed and had poor insight, judgment, and impulse control. She reported feelings of hopelessness and helplessness, and was given medication for depression. Dr. Janice H. Carter-Lourensz, M.D., assessed Alexis as clinically depressed, disturbed and frightened to return to Father. She said her observation supported Mother’s and Alexis’s statements that Alexis was anxious, depressed, and at risk for suicide if returned to Father. It was medically contraindicated to recommend that Alexis return to Father.

The DCFS had maintained communication with Alexis's guardian ad litem, Mr. Bryant and with Agent Rex Carroll, a dependency investigator with Tennessee Children's Services. Bryant and Carroll advised that if the California juvenile court found there was reason to believe proof of the parents' serious emotional abuse of Alexis, the case should be ordered returned to Tennessee with a recommendation that the current allegations be filed in Tennessee dependency court and that Alexis be placed in foster care or relative care under the Tennessee dependency court jurisdiction.

On February 26, 2010, Alexis's clinical director and her therapist interviewed Alexis and inquired about her possible return to Tennessee. Alexis stated: "Dying is better [than] being with my dad. He did a lot of things to me and I don't want to live with him again. . . . Going to heaven is better [than] being with my dad."

On March 2, 2010, the juvenile court found that a prima facie case was established that Alexis was a danger to herself and others, that she had threatened suicide on more than one occasion and had taken steps to go forward with suicide, and that it would be detrimental to her to be returned to Tennessee.

On March 24, 2010, the juvenile court and the parties' attorneys held a conference call with Judge Hamilton. The juvenile court advised it had ordered emergency detention of Alexis from both parents and set a hearing to hear motions on whether the California juvenile court should keep emergency jurisdiction. When asked if the Tennessee court requested to assert jurisdiction, Judge Hamilton stated: "I think so. Of course, your detention hearing might have some effect on my feelings of that."

On June 4, 2010, county counsel filed opposition to Father's motion for the juvenile court to recognize Tennessee's jurisdiction and a motion to continue emergency jurisdiction. The DCFS conceded that under the UCCJEA, Tennessee was the home state for family law litigation, but argued that dependency proceedings were never initiated in Tennessee and Tennessee child protective services would not commit to doing so, the allegations against Father and Mother were never litigated in the family law context, and that Alexis was at risk of harm and serious allegations must be investigated and heard in a

juvenile dependency court. The DCFS, joined by Alexis's attorney, requested continued emergency jurisdiction.

Father's response included Father's declaration, which stated that Father had learned Alexis was placed with Marian R. and requested her removal. Father attached a copy of a Maury County, Tennessee Department of Children's Services (DCS) "Plan of Action" of May 4, 2000, which alleged that Mother beat her daughters with a curtain rod and slammed their heads into a wall. Father's declaration stated that Mother was treated by two psychiatrists, one of whom diagnosed Mother with bipolar disorder. Father stated that before Alexis went to California with mother in May 2009, she was a happy and humorous child, involved in school, church, and community. Father said he had a solid, loving relationship with Alexis.

On June 18, 2010, the juvenile court found that Tennessee was Alexis's home state but that emergency temporary jurisdiction remained pending the adjudication hearing. The juvenile court ordered the DCFS, inter alia, to contact the DCS about filing a petition in Tennessee.

The DCFS also interviewed Father on June 18, 2010, who stated that while in elementary school he was sexually abused on two occasions, once by a neighbor and once by a salesman in a pet store. Father stated that he began experimenting with alcohol by drinking beer when he was 13 years old, and admitted requesting his five-year-old younger sister touch his genitals. He admitted this conduct to his parents, and felt shame. Father stated that in 1986 he became a committed Christian, stopped drinking, and remained sober for five years before meeting Mother in 1993. Father said that during their marriage Mother showed emotional problems, which problems worsened after Alexis was born in 1997. Father reported frequent episodes of screaming and accusations of domestic violence that resulted in the police intervening. Father denied allegations that he physically and sexually abused Alexis.

In an addendum report of August 24, 2010, the DCFS attached reports from Alexis's therapist that Alexis was diagnosed with PTSD and sexual and physical abuse, and would receive 20 weeks of trauma focus therapy. The Child and Family Guidance

Center reported that Alexis's primary symptoms were extreme worry about being reunited with Father in Tennessee, hyper-vigilance, and thoughts of hurting herself so that she would not have to live with Father.

A juvenile court mental health services assessment report of March 11, 2010, stated that Alexis's fear of returning to Tennessee caused serious distress that affected her mental health and exacerbated her existing depression. Alexis's reactions to returning to Father's care in Tennessee coincided with symptoms common in Post-Traumatic Stress disorder, and Alexis was currently not stable enough to be transferred to Tennessee without the possibility of increased distress or another suicidal gesture.

On August 24, 2010, Referee Levin stated that Tennessee had subject matter jurisdiction, but the court would hear testimony regarding keeping emergency jurisdiction. The juvenile court heard Alexis's testimony in chambers. Alexis testified that she wanted to stay in California because her father had abused her and she did not want to return to Tennessee because of his abuse. Alexis did not want to visit adult paternal cousin Nicole S. because she tried to make Alexis return to Father and she did not want visits with Father's mother, sister, or any of Father's relatives. Alexis stated that if the court returned her to Father in Tennessee, she would not get on the plane and would try to commit suicide in order not to go. Alexis stated that she would not visit with Father and did not want to see him. Alexis stated that she did not want to leave her mother.

Deirdre Kuper, a DCFS dependency investigator, testified that Alexis was adamant about not wanting to return to Tennessee and that for the court to order her return to Tennessee would be harmful to Alexis. Kuper did not believe Alexis needed placement in a group home, because services for her mental health needs were available in the community and her educational and physical needs were met in her current placement with Marian R. Kuper had talked with the Tennessee guardian ad litem, Mr. Bryant, a Tennessee dependency investigator, Rex Carole, and with Elizabeth Smith, the DCS legal counsel. In a conversation with Smith, both Kuper and County Counsel Randy Harris had requested that the DCS consider filing a juvenile court petition if

Alexis were ordered returned to Tennessee. Smith said she was not able to guarantee that they could file a petition there. Kuper had no information about what services Tennessee could offer Alexis on an outpatient basis.

The juvenile court ordered a section 730 evaluation of Alexis to determine whether an emergency still existed that would support emergency jurisdiction.

In a September 3, 2010, hearing, the juvenile court stated it was still unable to contact Judge Hamilton. On September 8, 2010, the juvenile court ordered a section 730 assessment by Dr. Ian Russ.

Dr. Russ's section 730 evaluation, dated February 10, 2011, was filed with the juvenile court. Alexis alleged that Father hit her with a rod, sexually abused her, and was violent and threatening with Alexis and with Mother. Alexis said she would refuse to talk with Father or have any contact with him. Dr. Russ assessed Alexis as mildly depressed, cautious, and somber in mood, but appropriate in social interaction and emotions and responding coherently to questions. Alexis showed mild to moderate symptoms of post-traumatic stress from being abused by Father and witnessing her mother being arrested. Alexis had considerable anxiety that she would be forced to return to Father's custody and that her mother would be arrested as a result of Father's complaints. Alexis had no current signs of suicide or self-destructive behavior as long as she was not threatened with returning to Father's custody, but she became overwhelmed and desperate when that possibility was raised. She said she would rather die than return to Father's care, and Dr. Russ assessed this statement as truthful.

Dr. Russ could not corroborate Father's past abuse of Alexis, but found Alexis's presentation about being abused by Father to be believable. If Alexis and Mother's allegations against Father were correct, Alexis would be at considerable risk for abuse from him. Father's telling Alexis about his having abused his sister or sisters provoked extreme anxiety in Alexis that Father could molest her. Alexis had refused to return to Tennessee, threatened suicide, and made a suicidal gesture with a razor blade. Although Alexis initially denied abuse, her later accusation of abuse by Father is more likely due to Alexis's realization that she might not have to return to Father and felt safe enough to

express her true feelings and account of her relationship with Father. Dr. Russ recommended that Alexis continue living with her sister Marian R. and her family, which would offer her a good family life in a good neighborhood, and Alexis would still have access to her mother. Dr. Russ recommended that she continue therapy and that her therapist help her explore reconnecting with her father, and that Alexis and her mother have free access to each other. Dr. Russ assessed that the risk of a suicide attempt would be high if Alexis were faced with being forced to return to father's custody in Tennessee.

On March 1, 2011, Referee Levin advised that she had sent an e-mail to Judge Hamilton in Tennessee, who had acknowledged that California should retain jurisdiction in this matter. An e-mail of February 24, 2011, from Judge Hamilton's administrative assistant, Jayne Owens, to Referee Levin stated: "Judge Hamilton asked that I send you this email acknowledging you[r] telephone conversation this morning, February 24, 2011 and agrees that he thinks California should retain jurisdiction in this case." The juvenile court set the matter for a jurisdictional hearing.

On April 13, 2011, Alexis's therapist reported that Alexis's diagnosis was post-traumatic stress disorder. Mother was in individual therapy, had completed a 17-week parenting education course, and had monitored visits with Alexis. Father had no contact with the DCFS, provided no documentation of his involvement in any services, and had no contact with Alexis.

On April 14, 2011, Father objected to the juvenile court taking jurisdiction or emergency jurisdiction. Referee Levin responded that the juvenile court no longer had emergency jurisdiction and instead had total jurisdiction, and that the Tennessee court had determined the jurisdiction issue.

On June 3, 2011, the DCFS filed a second amended section 300 petition, adding a count pursuant to section 300, subdivision (c), alleging that Mother and Father maintained a contentious family law custody dispute for three years. Mother involved Alexis in discussions about custody and her medical and emotional issues. Alexis had witnessed domestic violence between the parents. As a result of the parents' actions, Alexis demonstrated severe anxiety, depression, and suicidal ideation, resulting in two

hospitalizations in the previous year. Alexis believed that Father sexually abused her and when faced with return to Father repeatedly said she would commit suicide. The parents' emotional abuse placed Alexis at substantial risk of suffering serious emotional damage and suicide.

On July 18, 2011, county counsel announced that the DCFS was proceeding only on the new count in the second amended section 300 petition. Father made a general objection to the juvenile court taking subject matter jurisdiction based on a valid family law order in Tennessee governing custody of Alexis. Referee Levin responded that on "March 1st, Judge Jim T. Hamilton in the State of Tennessee gave up jurisdiction and conceded jurisdiction to this court on that date. That is why we're going forward today, and that's why this case has been in limbo. The court couldn't go forward until Tennessee did."

Father testified that Miriam R. was his stepdaughter. Father did not believe that Alexis was safe living with Miriam R. He said he had a good relationship with Alexis when she lived with him. When she left with her mother, Alexis never told him she wanted to go to California and not live with him. She showed no signs of stress or anxiety and did not receive counseling while living with Father. She appeared to enjoy living with Father and never told him she did not want to live with him. Father denied sexually or physically abusing Alexis. Father testified that Mother hit him many times while they were married.

The parties' counsel presented argument. County counsel argued that there was no information that Alexis was willing to live with Father, and her statements since detention were that if she was forced to have anything to do with Father, she would harm herself. County counsel argued that Alexis required the protection of the dependency system and did not desire return to Father. Alexis was comfortable, stable, and making progress in her current placement with a relative. She had not run away, attempted suicide or made statements to that effect, and she participated in school and received mental health services.

Alexis's attorney also requested that the juvenile court sustain the section 300, subdivision (c) count of the petition. Alexis's assertion that she would feel compelled to attempt suicide if forced to return to Father clearly resulted from the parents' custody battle and there was a clear risk to this child. Sufficient evidence enabled the court to sustain allegations of sex abuse, which Alexis believed were true and which caused her to feel anxiety and to have suicidal ideation related to return to Father.

Father's attorney requested dismissal of the petition and argued there was no present risk regarding anything Father did or did not do with Alexis. Father's attorney argued that this case represented Mother's forum shopping and that Mother did everything she could to alienate Alexis from Father. Father's attorney stated that Mother falsely told Father that a maternal family member was sick in order to have Alexis visit that person in California, but never intended to return Alexis to Father. Father's attorney called Alexis's reports of Father's sexual abuse, suicidal threats, depression, and anxiety not credible.

Mother's attorney argued that the juvenile court should rely on Dr. Russ's evaluation, who did not believe Mother or her family was a source of harm to Alexis.

Referee Levin stated that the section 300, subdivision (c) jurisdictional allegation was well pleaded, and that Mother and Father had inflicted emotional abuse on Alexis by their conduct in an ongoing contentious divorce case. Regarding Alexis's threats to kill herself if she had to return to Father, Referee Levin stated that she took those statements seriously, and could not return Alexis to Father or to Mother. The juvenile court found the allegations of the petition in count 2 to be true as to Mother and Father, found Alexis to be a person described by section 300, subdivision (c), and declared Alexis a dependent child of the juvenile court. The court ordered custody taken from the parent and placed with the DCFS for suitable placement. The juvenile court ordered the DCFS to provide family reunification to Alexis and the parents, and ordered monitored visits for Mother and for Father.

Father filed a timely notice of appeal.



## ISSUES

Father claims on appeal that:

1. Tennessee had continuing jurisdiction over matters arising from the Tennessee custody findings and orders, and the Parental Kidnapping Prevention Act preempts any conflicting provisions of the UCCJEA;
2. If the California juvenile court had emergency jurisdiction, it was temporary and did not permit the court to enter jurisdiction and disposition orders;
3. Tennessee did not decline jurisdiction.

## DISCUSSION

1. *The Tennessee Court Declined Jurisdiction over This Matter, and Under Section 1738A of the Parental Kidnapping Prevention Act, the California Dependency Court Could Modify the Custody Determination*

### A. *The Tennessee Court Declined Jurisdiction*

Father argues that under the Parental Kidnapping Prevention Act (28 U.S.C. § 1738A), Tennessee had continuing jurisdiction over this matter as long as one of the “contestants”—here Father—continued to reside in Tennessee.

The Parental Kidnapping Prevention Act (PKPA) applies the Full Faith and Credit Clause of the United States Constitution to custody determinations so as to provide for nationwide enforcement of custody orders made in accordance with the terms of the UCCJEA. The UCCJEA prescribes uniform standards for deciding which state can make a custody determination and obligates enacting states to enforce a determination made by a state with proper jurisdiction. (*Thompson v. Thompson* (1988) 484 U.S. 174, 180-181.)

Section 1738A, subdivision (d) states: “The jurisdiction of a court of a State which has made a child custody . . . determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.”<sup>3</sup>

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<sup>3</sup> A “contestant” is defined as “a person, including a parent or grandparent, who claims a right to custody or visitation of a child.” (28 U.S.C. § 1738A, subd. (b)(2).)

However, section 1738A, subdivision (f) states: “A court of a State may modify a determination of the custody of the same child made by a court of another State, if — [¶] (1) it has jurisdiction to make such a child custody determination; and [¶] (2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.”

Here Referee Levin contacted Tennessee Judge Hamilton many times and spoke to him on three occasions about the case. Although on February 1, 2010, Judge Hamilton wished to continue jurisdiction, on March 1, 2011, Judge Hamilton acknowledged that California should retain jurisdiction in this matter. The juvenile court therefore could modify a custody determination made by the Tennessee court because the Tennessee declined to exercise jurisdiction to modify such determination.

*B. The Record Is Sufficient to Show That the Tennessee Court Declined Jurisdiction*

Father claims that the record does not show that the Tennessee court declined jurisdiction.

A February 24, 2011, e-mail from Judge Hamilton’s administrative assistant, Jayne Owens, to Referee Levin stated: “Judge Hamilton asked that I send you this email acknowledging you[r] telephone conversation this morning, February 24, 2011 and agrees that he thinks California should retain jurisdiction in this case.” Father argues that this memorandum does not support the finding that Tennessee declined jurisdiction, citing statements by the Tennessee court indicating that it wanted to retain jurisdiction on February 1, 2010 and March 24, 2010. Those statements predate the February 24, 2011, memorandum by nearly a year. We do not find the memorandum vague or unclear. As Judge Hamilton indicated on March 24, 2010, his feeling on whether Tennessee would assert jurisdiction could be affected by the juvenile court’s orders. During the intervening year, Judge Hamilton changed his view of jurisdiction, and declined to assert Tennessee jurisdiction over the case. The record sufficiently showed that the Tennessee court declined jurisdiction.

Family Code section 3410, subdivision (d) requires a record to be made of a communication under that section. “For the purposes of this section, ‘record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” (*Id.*, subd. (e).) The February 24, 2011, e-mail to Referee Levin satisfies this requirement as a memorandum of communication between the courts in a tangible medium. (*In re C. T.* (2002) 100 Cal.App.4th 101, 111-112.)

Father claims a violation of Family Code section 3425, subdivision (a), which states: “Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standard of Section 3428 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.” Father was represented by counsel, had notice and an opportunity to be heard, filed a series of motions, declarations, points and authorities, and other documents from the time of the January 26, 2010, hearing to the July 18, 2011, hearing in which the order was made from which Father appeals. Father made no objection based on a violation of section 3425, subdivision (a), in the juvenile court, and there was no such violation.

*2. The Juvenile Court Had Jurisdiction to Enter Jurisdictional and Dispositional Orders*

*A. The Juvenile Court Properly Communicated With the Tennessee Court and Properly Assumed Jurisdiction After the Tennessee Court Declined Jurisdiction*

Father claims that if the juvenile court had emergency jurisdiction, it was temporary and did not permit the juvenile court to make jurisdiction and disposition orders.

The UCCJEA “is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions and governs juvenile dependency

proceedings.” (*In re C. T.*, *supra*, 100 Cal.App.4th at p. 106; Fam. Code, §§ 3402, subds. (c), (d); 3421, 3423, 3424, subd. (a).)

Family Code section 3424, subdivision (a) states: “A court of this state 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.” Where there is a previous child custody determination that is entitled to be enforced, Family Code section 3424, subdivision (c) requires a court to specify in its order “a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive.” “We infer from this statutory scheme the Legislature’s intent to afford all children found in California the protection of California’s juvenile court in exigent circumstances. . . . ‘Aside from the necessity of protecting a child from immediate harm, presence of the child in the state is the only prerequisite’ to taking action.” (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1138.) Emergency jurisdiction continues over the child after the juvenile court determines the existence of an emergency because of the emergency created by abuse of the child and the impossibility of returning the child to her parent. (*In re Jorge G.* (2008) 164 Cal.App.4th 125, 132.)

When a court is asked to exercise emergency jurisdiction over a child and the court learns of another state’s custody determination, the court must communicate with the other court to resolve the emergency, protect the safety of the child, and determine a period for the duration of the temporary order. (Fam. Code, § 3424, subd. (d).)

“Except as otherwise provided in Section 3424, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made:

“(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427.

“(b) A court of this state or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state.” (Fam. Code, § 3423.)

The juvenile court made repeated efforts to communicate with the Tennessee court. After talking with Judge Hamilton on February 1, 2010, the juvenile court was unable to contact Judge Hamilton on March 2, 2010. On March 24, 2010, Judge Hamilton was informed of the juvenile court’s emergency detention of Alexis and of a pending hearing on April 29, 2010, to determine whether the juvenile court should keep emergency jurisdiction. The juvenile court also informed Judge Hamilton that if it decided it had emergency jurisdiction, it would consult with Judge Hamilton on how long that jurisdiction should last. Judge Hamilton requested that copies of the juvenile court’s orders be provided to him. The juvenile court asked Judge Hamilton if he requested to assert jurisdiction of Alexis. Judge Hamilton answered: “I think so. Of course, your detention hearing might have some effect on my feelings of that.”

At the August 24, 2010, hearing on the need for emergency jurisdiction, the juvenile court stated that it had tried to contact Judge Hamilton in the previous two weeks but had not received a call back. On September 3, 2010, the juvenile court again stated that it had tried several times in the previous weeks to contact the court in Tennessee but was unable to get in touch with Judge Hamilton. On February 14, 2011, the juvenile court stated that it had still not heard from the Tennessee court. On March 1, 2011, the trial court notified the parties that it had e-mailed Judge Hamilton, who had “acknowledged that California should retain jurisdiction in this matter[.]” The Tennessee court having determined it no longer had exclusive, continuing jurisdiction, the juvenile court could take jurisdiction pursuant to Family Code sections 3423, subdivision (a),

*ante*, and 3421, subdivision (a)(2).<sup>4</sup> It therefore had jurisdiction to make adjudication and dispositional orders, which it ultimately entered on July 18, 2011.

Other delay occurred because Dr. Russ, the psychologist appointed to make an Evidence Code section 730 evaluation of Alexis, could not provide the evaluation until February 2011, but all parties consented to the delay due to Dr. Russ's schedule. A further delay occurred when Father's private attorney was relieved on January 19, 2011, which required appointment of new counsel on February 14, 2011, and time for new counsel to become familiar with the case.

During this period, Alexis continued to manifest mental and emotional distress and threatened to kill or harm herself when faced with the possibility of returning to Father's custody in Tennessee. A series of mental health professionals found Alexis's threats of self-harm to be credible. The continuing existence of Alexis's symptoms supported the juvenile court's emergency jurisdiction. "Even though emergency jurisdiction ordinarily is intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the risk of harm creating the emergency is ongoing." (*In re Angel L.*, *supra*, 159 Cal.App.4th at p. 1139.) We find no reversible error due to the delay between

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<sup>4</sup> Family Code section 3421, subdivision (a) states: "Except as otherwise provided in Section 3424, 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 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."

the juvenile court's assumption of emergency jurisdiction, the Tennessee court's declining of jurisdiction, and the juvenile court's adjudication and dispositional orders.

*B. The DCFS Took Steps to Obtain an Order in Tennessee, but That State Did Not Respond by Filing a Dependency Petition*

Father claims that as the party seeking the emergency order, the DCFS was required to take steps to obtain the appropriate order in the home state.

Family Code section 3424, subdivision (c) states: "If there is a previous child custody determination that is entitled to be enforced under this part . . . any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires."

In the June 18, 2010, hearing the trial court stated that the Tennessee DCS, Maury County had been called many times about filing a dependency petition in Tennessee. The juvenile court ordered the DCFS to contact Alexis's guardian ad litem in Tennessee and to contact Maury County in Tennessee regarding the filing of a dependency petition with the Tennessee DCS. In the August 24, 2010, hearing, Deirdre Kuper, a DCFS dependency investigator, stated that she had talked with the Tennessee guardian ad litem, Mr. Bryant, with a Tennessee dependency investigator, Rex Carole, and with Elizabeth Smith, the DCS legal counsel. In a conversation with Smith, both Kuper and County Counsel Randy Harris had requested that the DCS consider filing a juvenile court petition if Alexis were ordered returned to Tennessee. Smith said she was not able to guarantee that they could file a petition there. The DCFS did take steps to obtain the order in Tennessee, which did not respond by filing a dependency petition in that state. The DCFS complied with Family Code section 3424, subdivision (c).

DISPOSITION

The order is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.