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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ADRIAN B. et al., Persons
Coming Under the Juvenile Court
Law.

B284964

(Los Angeles County
Super. Ct. No. DK05237)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from orders and jurisdictional findings of the
Superior Court of Los Angeles County. Thomas E. Grodin,
Referee. Orders affirmed with directions.

John L. Dodd, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

M.M. (Mother) appeals from the August 9, 2017 order terminating her parental rights. She argues the juvenile court did not have subject matter jurisdiction because it failed to comply with the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). She contends the juvenile court did not determine the home state, which was Missouri, and never conferred with Missouri as to whether it wished to exercise jurisdiction over the dependency case. Although the trial court failed to comply with the UCCJEA, we affirm because the court’s assumption of emergency jurisdiction was proper. We remand to the juvenile court to allow it to contact and provide notice to the Missouri court.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mother and Adrian B., Sr. (Father) are the parents of six-year-old Adrian B., Jr., and five-year-old Josiah B. Both children were born in Missouri. The family had a dependency history with the Missouri Department of Social Services beginning in August 2011, shortly after Adrian Jr.’s birth. Mother reported Adrian Jr. tested positive for heroin at birth. In July 2013, there was a subsequent referral for domestic violence perpetrated by Father. Father was arrested, and Mother and the children were granted

a temporary restraining order. The Missouri Department of Social Services opened a case on October 10, 2013 because of the domestic violence incidents. The parents did not participate in remedial services. On November 7, 2013, the case was closed because Mother indicated she was relocating to Los Angeles.

Mother and the children arrived in Los Angeles on April 2, 2014. Mother stated she left Missouri to get away from her abusive relationship with Father. On April 25, 2014, Mother was arrested for possession of a stolen car, hashish, and metal knuckles. She was driving a car that had been reported stolen in St. Louis, Missouri. Mother was in jail for five days and left the children with a friend. Her case was dismissed on June 25, 2014, after she completed 60 hours of community service and attended 10 Narcotic Anonymous meetings pursuant to court order.

On May 1, 2014, the Los Angeles Department of Children and Family Services (“the department”) received a referral from Los Angeles Union Rescue Mission (“Rescue Mission”) alleging Mother neglected her children. Mother tested positive for marijuana and was not permitted to stay at the shelter beyond the next day because of its strict drug policy. After Mother and the children left Rescue Mission, they went to Compton and used a housing voucher to stay at an emergency shelter. When the housing voucher expired, the family returned to Rescue Mission. On May 24, 2014, Rescue Mission called the department with a second referral of general neglect. The shelter reported Mother smoked cigarettes in the presence of the children, and tested positive for marijuana and other drugs. The family was only allowed to stay for three more days because of Mother’s positive drug test.

Mother was interviewed by a social worker at the shelter. Mother started using heroin at age 13 but stated she was drug free after Adrian Jr. was born. She admitted she was currently using marijuana. After coming to California, Mother immediately obtained a medical marijuana card. She did not disclose what medical condition she was treating with marijuana. She did not know where the family would go after leaving Rescue Mission. She indicated Father was still in Missouri. According to Mother, he was using drugs including cocaine, heroin, crack, marijuana, and alcohol.

The department contacted Father by telephone. Father denied any domestic violence or drug use. He did not live with Mother and lost contact with her at the end of March 2014.

On May 29, 2014, the department filed a Welfare and Institutions Code section 300 petition on behalf of Adrian Jr. and Josiah. The petition alleged Mother had a 17-year history of drug use, including heroin, and was a current marijuana abuser. On prior occasions, Mother was under the influence of illicit drugs while the children were under her care and supervision. Mother's illicit drug use and Father's failure to protect endangered the children's health and safety and placed them at risk of harm. At the May 29, 2014 detention hearing, the juvenile court detained the children from Mother's custody and granted her monitored visits. On September 29, 2014, the juvenile court sustained the allegations in the petition and found the children were dependents of the court under Welfare and Institutions Code section 300, subdivision (b)(1).

On January 6, 2015, the department filed a Welfare and Institutions Code section 342 petition to add allegations relating to Father's physical abuse of Adrian Jr. and domestic violence

with Mother that occurred in Missouri in 2013, based on the records from the Missouri Department of Social Services.¹ On February 20, 2015, the juvenile court sustained the allegations that in 2013, Father hit Adrian Jr. on his back with a woven leather belt, and hit the child on his face leaving a mark. Adrian Jr. had two scars, on his back and stomach, while in the care of his parents. The court also sustained the allegations that the parents had a history of domestic violence, and Father had threatened to kill Mother and Adrian Jr. The juvenile court found the children were dependents of the court under section 300, subdivisions (b)(1) and (j).

Mother was arrested and incarcerated on June 28, 2015, and was released on August 7, 2015. As of August 21, 2015, she failed to appear for drug tests and had not participated in a substance abuse program, parenting classes, or individual counseling. She had not visited the children since January 2015. Father had not requested any visitation with the children and had made no visits. He reported he was incarcerated in Texas for three months for traffic-related issues.

As of April 27, 2015, the children were placed in two separate foster homes because they fought with each other. Adrian Jr.'s caregivers were willing to become his legal guardians. Josiah's caregiver was interested in adopting him. In addition, the paternal grandmother in Missouri, a paternal aunt in Texas, and a maternal aunt in France expressed interest in providing permanency for the children.

¹ The department filed an amended Welfare and Institutions Code section 300 petition, which the juvenile court deemed to be a section 342 petition pursuant to stipulation by the parties.

On September 30, 2015, Mother was arrested and detained for arson. She stated she had relapsed and used crystal methamphetamine prior to her arrest. Mother began attending anger management, parenting, life skills, and substance abuse classes in January 2016 at the detention center. She wanted her children to be placed with family in Missouri.

Father had not enrolled in any court-ordered services. He was arrested and jailed in November 2015. He wanted his children to be released to his sister, A.B. Beginning in November 2015, A.B. started calling the children regularly to build a bond with them.

At the April 4, 2016 status review hearing, the juvenile court terminated reunification services for the parents. On July 25, 2016, the department reported the Missouri Department of Social Services had conducted an assessment of A.B.'s home pursuant to the Interstate Compact on the Placement of Children request. The department requested that the children be released to A.B.'s care and their permanent placement services continue with A.B. as the prospective adoptive parent. The juvenile court granted the request and ordered the children placed with A.B. in Missouri. The children were placed with A.B. on August 27, 2016.

On February 8, 2017, the department requested authorization to pick up the children from Missouri and return them to California for placement. A.B. had brought the children to the hospital and reported they were exhibiting aggressive behavior. Hospital staff reported the children had lateral and loop shaped marks on their bodies and one of the boys had a black eye. The children stated they were hit with a hand, belt, or brush on their arms, legs, and bottoms. Because the children

were under the jurisdiction of the California court, the children could not be placed in a Missouri foster home. On February 9, 2017, the juvenile court ordered the children returned to Los Angeles County for placement. The children were placed with Mr. and Mrs. B., who wanted to adopt them.

On February 28, 2017, Mother filed a Welfare and Institutions Code section 388 petition. She requested return of the children to her care, or in the alternative, additional family reunification services. Mother argued she was committed to reunification with her children and had completed numerous programs while incarcerated, including parenting, anger management, and domestic violence classes, and individual counseling. On March 7, 2017, the juvenile court denied the petition, finding it failed to state new evidence or a change of circumstances, and was not in the children's best interest.

On August 9, 2017, the juvenile court found the children were likely to be adopted and terminated parental rights over the parents' objections. The court ordered adoption as the children's permanent plan and identified their current caregivers, Mr. and Mrs. B., as prospective adoptive parents. Mother filed her notice of appeal on September 1, 2017.

III. DISCUSSION

A. UCCJEA

Subject matter jurisdiction either exists or does not exist at the beginning of the dependency case. (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 516; *In re A.C.* (2017) 13 Cal.App.5th 661, 668.) It cannot be conferred by the mere presence of the parties or by

stipulation, consent, waiver or estoppel. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 516; *In re R.L.* (2016) 4 Cal.App.5th 125, 136.) We review for substantial evidence the jurisdictional findings under the UCCJEA. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 520; *In re A.C.*, *supra*, 13 Cal.App.5th at p. 669.) But we review de novo the juvenile court's statutory interpretation, and its determination of jurisdictional facts based on the undisputed evidence. (*In re A.C.*, *supra*, 13 Cal.App.5th at p. 670.)

The UCCJEA governs child custody proceedings including dependency cases. (Fam. Code,² § 3402, subd. (d); *In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 516; *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096.)³ The UCCJEA is the exclusive method for determining the proper forum in child custody proceedings involving other jurisdictions. (§ 3421, subd. (b); *In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 516; *In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1096.) The purposes of the UCCJEA include: avoiding jurisdictional conflict between states; promoting interstate cooperation; litigating custody where the child and family have the closest connections; avoiding relitigation of another state's custody decisions; and facilitating enforcement of another state's custody decrees. (*In re R.L.*, *supra*, 4 Cal.App.5th at p. 136; *In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1099.)

² Further statutory references are to the Family Code unless otherwise specified.

³ Both California and Missouri have adopted the UCCJEA. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 516; Mo. Rev. Stat. §§ 452.700-452.930; *Grega v. Grega* (2017) 524 S.W.3d 150, 153.)

“Under section 3421, California may assume jurisdiction to make an initial child custody determination only if any of the following apply: California is the child’s ‘home state,’ meaning the state in which the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the child custody proceeding was commenced (§§ 3421, subd. (a)(1), 3402, subd. (g)); a court of another state does not have jurisdiction because it is not the child’s home state (§ 3421, subd. (a)(2)); a court of the child’s home state has declined to exercise jurisdiction on the ground California is the more appropriate forum (*ibid.*); all courts having jurisdiction have declined to exercise jurisdiction on the ground California is the more appropriate forum (§ 3421, subd. (a)(3)); or no other state has jurisdiction under the foregoing tests (§ 3421, subd. (a)(4)).” (*In re. A.M.* (2014) 224 Cal.App.4th 593, 598.) “A child’s home state has priority over other jurisdictional bases. (§ 3421, subd. (a)(1); *In re A.C.*, *supra*, 13 Cal.App.5th at p. 669.)” (*In re Aiden L.*, *supra*, 16 Cal.App.5th at p. 518.)

A court without jurisdiction under section 3421, subdivision (a) may nonetheless exercise temporary emergency jurisdiction. (*In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1097; *In re Gino C.* (2014) 224 Cal.App.4th 959, 965.) “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 . . . is subjected to, or threatened with, mistreatment or abuse.” (§ 3424, subd. (a).) The juvenile court, however, “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.” (*In re*

Aiden L., *supra*, 16 Cal.App.5th at p. 518; *In re Gino C.*, *supra*, 224 Cal.App.4th at pp. 965-966.)

A court exercising emergency jurisdiction under section 3424 is required to contact and provide notice to another state's court to determine whether the other state wishes to assert jurisdiction under section 3421. (*In re Aiden L.*, *supra*, 16 Cal.App.5th at pp. 518-519; *In re R.L.*, *supra*, 4 Cal.App.5th at pp. 142-143.) The juvenile court's failure to comply with the UCCJEA's procedural requirements is subject to harmless error analysis. (*In re A.C.*, *supra*, 13 Cal.App.5th at p. 673; *In re R.L.*, *supra*, 4 Cal.App.5th at p. 143.)

B. Juvenile Court's Failure to Comply With UCCJEA Procedures Requires Remand

Mother does not challenge the juvenile court's emergency jurisdiction under section 3424, subdivision (a). Rather, she argues that the juvenile court erred by failing to contact the Missouri court as required under the UCCJEA. Mother contends and the department concedes the children's home state is Missouri. Both children were born in Missouri; Mother and the children previously lived in Missouri; and they had only been in California for about two months before the dependency petition was filed. The department also concedes that the juvenile court should have contacted the Missouri court but failed to do so.

While both parties agree that the juvenile court's failure to contact Missouri is subject to harmless error review (*People v. Watson* (1956) 46 Cal.2d 818, 836; *In re A.C.*, *supra*, 13 Cal.App.5th at pp. 673-674; *In re R.L.*, *supra*, 4 Cal.App.5th at p.143 [UCCJEA procedural error subject to *Watson* harmless

error test]), they disagree about whether the court's error here was harmless. Mother contends we should vacate all jurisdictional and dispositional orders because it is reasonably probable that "Missouri would have been adjudged the minor's 'home state' and . . . Missouri would have chosen to exercise jurisdiction." The department, on the other hand, argues that it is not reasonably probable that "Mother would have reached a more favorable result in a Missouri court," and urges us to affirm all orders, including the order terminating parental rights.

Courts have found a failure to comply with the procedural requirements of the UCCJEA harmless where: no other state or country had jurisdiction as a home state under the UCCJEA (*In re R.L.*, *supra*, 4 Cal.App.5th at pp. 144-145); the juvenile court later contacted the home state court, which declined to exercise jurisdiction (*In re Cristian I.*, *supra*, 224 Cal.App.4th at p. 1101); or the juvenile court later contacted the home state court which elected to exercise jurisdiction (*In re C.T.* (2002) 100 Cal.App.4th 101, 111-112). But we have not found, and the department does not cite, any authority for the proposition that a juvenile court's orders should be affirmed without remand. (*In re A.M.*, *supra*, 224 Cal.App.4th at pp. 599-600 [where juvenile court properly assumed emergency jurisdiction but failed to contact home state of Mexico, affirming jurisdictional and dispositional orders but ordering remand for the limited purpose of contacting Mexican authorities to determine whether Mexico wished to assume jurisdiction].)

Here, it is undisputed that Missouri is the proper home state. Moreover, a Missouri court had previously conducted dependency hearings regarding the children. While there are numerous reasons why the Missouri court, once contacted by the

juvenile court pursuant to the UCCJEA, may ultimately decline to exercise jurisdiction over this matter, on this record, we think the better practice is to affirm the orders under review but remand the matter for the limited purpose of permitting the juvenile court to contact the Missouri court.

IV. DISPOSITION

The juvenile court's orders are affirmed. The case is remanded for the limited purpose of permitting the juvenile court to contact the Missouri court and assess whether Missouri wishes to assume jurisdiction. If the Missouri court does not take action after contact and notice, the jurisdictional findings and all orders including the parental termination order will remain in effect. If the Missouri court commences proceedings, the juvenile court is directed to proceed in conformity with the provisions of the UCCJEA.

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KIM, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.