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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re E.J., a Person Coming Under the
Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.J., et al.,

Defendants and Respondents,

E.J., Minor

Appellant.

A144845

(San Mateo County
Super. Ct. No. JV83986)

Five-year-old E.J. appeals from an order dismissing a dependency petition filed on his behalf under Welfare and Institutions Code section 300, subdivisions (a), (b), (e) and (i). E.J. had recently moved to California from Washington with his mother, stepfather and older half sister when the dependency petition was filed in September 2014, alleging physical abuse by the stepfather and failure to protect by the mother. Less than two months after the petition was filed, E.J.'s biological father was allowed to take him back to Washington to live. Because it appeared E.J. was living safely with his father out of state, and because the San Mateo County Human Services Agency (Agency) believed the

court's temporary emergency jurisdiction had expired, the Agency moved to dismiss the dependency case, and the court obliged. E.J. appeals, seeking reinstatement of temporary dependency jurisdiction on grounds it was error for the court to dismiss the petition without first contacting the court in Washington, where other child custody proceedings were pending, arguing that such communication was required under Family Code section 3424,¹ part of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), as enacted in California. We conclude that, because California's temporary emergency jurisdiction had expired under the UCCJEA, the court did not err in dismissing the petition, but it did err in failing to contact the Washington court. Given its otherwise correct adjudication of the case, we conclude its error was harmless and affirm.

I. BACKGROUND

A. Events leading up to the California dependency petition

E.J. was three and a half when he came to the attention of the Agency in September 2014, and his older sister, A.J., was six. The two children had different fathers. They had been living in Washington with their mother, J.J. (Mother), and stepfather, Paul C., until September 6, 2014, when the family moved to San Mateo County, California. Mother and Paul C. had just married in July 2014. Paul C. was a California native and had relatives here, so (according to Mother) they decided to come to California to make a fresh start.

Both biological fathers of the children also lived in Washington and continued to live there after Mother took the children to California. A.J.'s father, William S., was named a presumed father in A.J.'s case. He had engaged in weekly visits with her by informal agreement prior to Mother's marriage to Paul C. After that, Paul C. would not allow William S. to see A.J. and made physical threats against him.

Because of the disruption in visitation, William S. filed an action in superior court in Washington seeking a regular shared custody arrangement. He told the juvenile court in California that he filed his petition in Washington as soon as he learned Mother and

¹ Statutory references are to the Family Code unless otherwise indicated.

Paul C. were planning to move to California. Mother was notified of a hearing held in the Washington custody case that occurred on August 22, 2014, but evidently she failed to attend. A hearing was also scheduled in Washington for September 16, 2014, but by then Mother and Paul C. had left the state with the children. On September 29, 2014, the court in Washington approved a “Parenting Plan Temporary” (PPT) in a matter captioned, “*In re the Parentage of [A.J.]*,” which set forth shared custody arrangements and, among other things, belatedly ordered Mother “not [to] remove the child from the state of Washington.” The order also prohibited Mother to leave A.J. alone with Paul C. pending further court order. A “parenting plan” is considered a child custody order under Washington law. (Wash. Rev. Code § 26.27.021, subd. (3).) Mother’s relatives told investigators that Mother and Paul C. had left Washington because William S. was “fighting for custody.”

E.J.’s father, Christian S., had seen his son only once when E.J. was two months old, but a DNA test showed he was the biological father. Christian S. also had been paying child support for E.J. for about 18 months after a paternity action filed in 2012 in Washington determined he was E.J.’s father. At the time the jurisdiction report was prepared, Christian S. had not been located. He was located on October 1, 2012, and he told the social worker about the paternity action and provided a case number.² A paternity action is recognized as a child custody proceeding under the UCCJEA. (§ 3402, subd. (d); Wash. Rev. Code § 26.27.021, subd. (4).)

When they arrived in California, Mother, Paul C. and the children stayed in hotels and homeless shelters, and sometimes stayed with Paul C.’s aunt in Daly City. On both September 20 and 21, 2014, while they were staying with Paul C.’s aunt, she overheard Paul C. yelling at E.J. in the bathroom, evidently angry about E.J.’s lack of progress in

² Although there is a discrepancy in case numbers, at the Agency’s request, we have taken judicial notice of a court order from King County, Washington dated September 12, 2012, captioned *In re Parentage: State of Washington vs. [Christian S.], et al.*, in docket number 12–5–00382–4 KNT, entitled, “Judgment and Order Determining Parentage and Granting Additional Relief” (Parentage Order).

toilet training. On September 20, when E.J. came out of the bathroom, Paul C.'s aunt noticed a bump on his forehead. On the 21st, she again heard yelling and a thumping sound while they were in the bathroom. She overheard Mother, who was in the bathroom with them, say, "Paul, this has to stop." When E.J. told the aunt Paul C. had hit him, she reported the abuse. The police responded, and E.J. was taken to the hospital.

Mother eventually admitted that on September 21, Paul C. had hit E.J. on the side of his head with an open hand so hard that E.J.'s head hit the sink near his eye and his eye began to swell. She also told the social worker that Paul C. had shoved a lollipop stick into E.J.'s ear during the incident in the bathroom. Paul C. was arrested, jailed and prosecuted.

E.J. was initially seen at the hospital for the abrasion near his eye, but when doctors examined him further they found other evidence of abuse, such as old bruises and abrasions in various stages of healing, and most notably a swollen and enlarged penis and scrotum, as well as an open wound on one of his testicles. E.J. underwent emergency surgery the next day and the doctors opined that his genital injuries were caused by non-accidental blunt trauma. One doctor said the injuries were the worst he had seen to a child's genitals in 35 years of practice. Had it not been for the emergency surgery, it would have been necessary to remove E.J.'s injured testicle. Two weeks later, E.J. told a social worker that Paul C. had cut his scrotum with a knife, "like you cut bread." His substitute care provider reported that E.J. claimed Paul C. had also "used a vacuum" on his genitals. Mother also eventually admitted she had seen the injuries to E.J.'s scrotum on September 5, before moving to California, but had not taken him to a doctor because Paul C. objected.

B. The dependency proceedings in California

On September 23, 2014, the Agency filed a petition alleging serious physical harm, failure to protect, and severe physical abuse of a child under age five. (Welf. & Inst. Code, § 300, subds. (a), (b) & (e).) The petition was later twice amended, with both amended petitions alleging cruelty in addition. (*Id.*, subd. (i).) The detention report attached numerous medical and police reports relating to E.J.'s injuries.

William S. appeared with counsel at the detention hearing and was declared A.J.'s presumed father. He offered to take custody of both A.J. and E.J. and asked that he be evaluated for placement. Counsel for William S. also informed the court orally that William S. "did engage an attorney in Washington, and they filed in family court for custody of his daughter, [A.J.]" The court asked no questions about the Washington proceeding and said nothing evidencing an awareness that the UCCJEA might apply. It ordered both children detained, placed them in foster care locally, and set a jurisdictional hearing for October 14, 2014.

On October 9, the Agency filed a first amended petition, adding a cruelty allegation. The jurisdictional report reconfirmed that the injuries to E.J.'s scrotum were non-accidental and had been inflicted some two to three weeks before the surgery in "at least a couple of episodes of injury to his scrotum." The jurisdictional report further noted there was an "open" family law case in Washington relating to E.J., and alerted the judge to the pendency of the PPT in A.J.'s case. A copy of the PPT was attached to the social worker's report. Yet, it appears the juvenile court made no phone call to Washington to discuss the California emergency with the judge who presided over the PPT or to ascertain the status of E.J.'s case.

A.J.'s father attended the scheduled jurisdictional hearing with counsel, and E.J.'s father attended by video conference, also represented by counsel. Again William S.'s attorney told the judge, "My client is here from Washington. He did go to family court in Washington, and they worked out a family custody plan." The court ordered A.J. returned to her father and allowed Mother supervised visitation in the event she relocated to Washington. Although the order was clearly temporary pending completion of the jurisdictional hearing, it did not specify a termination date. (See § 3424, subd. (c).)

Christian S. requested that E.J. be placed with him in Washington, but E.J.'s counsel expressed concern due to the negligible prior contact between father and son. The court denied Christian S.'s request but gave the Agency authority to place E.J. with Christian S. in its discretion. The jurisdictional hearing was continued to December 29, 2014, due to the volume of medical evidence.

By the time of the December 29 hearing, both children had left California and were living with their respective fathers in Washington. E.J. had been living with his father since mid-November 2014. Mother, too, had relocated to Washington at the same time E.J. did. Although there were some natural transition issues due to the fact E.J. had not previously had a relationship with Christian S., by mid-December 2014, when the social worker visited, E.J. seemed happy in his new home. In addition to E.J. and Christian S., the household included Christian S.'s wife, their three-year-old son, and their newborn baby. E.J. was receiving mental health services, which included joint sessions with Christian S., to help with the transition. E.J. was having weekly supervised meetings with Mother at a local mall. Overall things were "going great" in E.J.'s new home. The Agency's addendum report for the December 29 hearing recommended that full legal and physical custody of the children be awarded to their respective fathers, with supervised visits for Mother twice a month.

C. Mother's motion to dismiss under the UCCJEA

At the time of the December 29 hearing, Mother filed a motion to dismiss the dependency petition on the ground that, under the UCCJEA, the court lacked subject matter jurisdiction. As Mother analyzed the issue, the court had initially acquired only temporary emergency jurisdiction under section 3424. She argued it no longer had jurisdiction because the children were safely living with their fathers in Washington. According to Mother, the court could only issue temporary orders under section 3424 and could not issue a permanent custody order unless California became the child's "home state."³ (§ 3424, subd. (b).) Since California did not qualify as E.J.'s home state, she argued, the petition should be dismissed without a jurisdictional hearing. Mother also argued California was "precluded" from adjudicating the petition because both children

³ A child's "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. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period." (§ 3402, subd. (g).)

and all parents were now residing outside of California, citing section 3422. Finally, she suggested that a forum non conveniens analysis should be conducted under section 3427, and Washington was the most convenient forum, since both children and all of the parents now live in Washington. The court vacated the current date for trial and set a hearing on Mother's motion for January 26, 2015.

On January 8, 2015, the Agency filed a second amended petition adding an allegation to each substantive count that Mother "knew or reasonably should have known that the child's stepfather had committed more than one act of physical abuse upon the child that caused significant bleeding, deep bruising, and/or significant external or internal swelling." The Agency recommended that the court sustain the second amended petition, declare the children dependents, award full sole legal and physical custody of both children to their fathers, and then dismiss the case.

It was not until she filed a supplemental brief on January 20, 2015 that Mother expressly asked the California court to contact the Washington court. Mother asserted there were pre-existing child custody proceedings pending in Washington for both children. She suggested asking the Washington court whether custody orders had been made concerning E.J. If no custody orders had been made, Mother still urged the court to defer to Washington's home state jurisdiction.

In opposition to Mother's motion, the Agency informed the court there were *no* open child custody cases in Washington with respect to E.J., characterizing the Parentage Order as "strictly [an order] for child support," not custody. (See § 3402, subd. (c).) The Agency acknowledged that Washington was the children's home state but urged the juvenile court to exercise temporary emergency jurisdiction under section 3424. The Agency argued that, because no custody order had been made in Washington, the California court could proceed to a jurisdictional determination and final custody order.⁴

⁴ With respect to A.J., the Agency's position was that the petition should not be dismissed, but the court should specify a period that the court's orders should remain in effect (§ 3424, subd. (c)), which amounted to a concession that the PPT was a child custody order. (§ 3402, subd. (c); Wash. Rev. Code § 26.27.021, subd. (3).)

(See § 3424, subd. (b).) The Agency also argued that California, not Washington, was the more convenient forum because all of the witnesses besides the family members were in California. And finally, the Agency hypothesized that Mother was forum shopping, in derogation of “the purpose and policy behind the UCCJEA.” The Agency was concerned that, if the court dismissed the California dependency petition, the matter would be adjudicated solely as a family law matter in Washington, and Mother would avoid the consequences of her failure to protect E.J. The children and their fathers sided with the Agency.

At the hearing on January 26, 2015, Christian S.’s attorney presented to the court a copy of the Parentage Order for the first time. Besides establishing that Christian S. was the father, the order specified Washington as E.J.’s home state, identified Mother’s home as his primary residence, named Mother as “custodian” “solely for the purpose of other state and federal [statutes]”, and ordered Christian S. to pay child support. (See fn. 2, *ante*.) The parties disagree whether the Parentage Order qualifies as a child custody order under the UCCJEA, but under Washington law, such an order is considered a “custody decree.” (*In re Parentage of C.M.F.* (2013) 179 Wn.2d 411, 422–425 [314 P.3d 1109, 1114–1115].) Despite the pre-existing Washington order, Christian S.’s attorney argued the dependency case in California should not be dismissed. (But see § 3424, subd. (c).)

The court denied Mother’s request that it call the court in Washington, saying it made “no sense” to contact a Washington family court to “urge them to give the court permission” to continue with the dependency matter because the pending case in Washington dealt only with child support, not custody. (But see *In re Parentage of C.M.F.*, *supra*, 179 Wn.2d at pp. 422–425; 314 P.3d at pp. 1114–1115.) The court noted, “All of the evidentiary matters are here. The witnesses are here. The allegations in the petition arose here in San Mateo County.” The court believed there was no “conflict with any family law case in Washington,” opining that a true conflict could arise only if it proceeded to issue dispositional orders. After denying the motion, the court set the case for a jurisdictional hearing on March 10 and 11, 2015.

D. The Agency’s petition under Welfare and Institutions Code section 388

In an about-face, on February 18, 2015, the Agency filed a petition under Welfare and Institutions Code section 388 reversing its position on the UCCJEA issue and now advocating, with Mother, that the court lacked jurisdiction under the UCCJEA.⁵ The Agency sought to vacate the hearing set for March 10 and 11. It suggested the court lacked jurisdiction because the “children’s need for emergency protective custody orders in [California] no longer exists.” An addendum report prepared to accompany the Agency’s motion to dismiss said both children “continue to do well with their respective fathers, and are both thriving under their care.” The social worker’s report concluded that both children would be safe living with their fathers if the dependency case were dismissed.

The Agency also argued that temporary emergency jurisdiction “does not encompass the sustaining of a dependency petition.” Though it was proper for the court to detain the children, the Agency opined the California court had “no jurisdiction to sustain a dependency petition because jurisdiction under the UCCJEA lies with the State of Washington.” The report also noted that Christian S. planned to seek a custody order in Washington on February 17, 2015.

A hearing on the Agency’s petition was held on February 26, 2015, at which E.J.’s counsel opposed dismissal of the petition and suggested contacting the judge in Washington to ascertain, among other things (1) whether the Washington court would be willing to cede jurisdiction to the California court to proceed with the dependency case, and (2) whether it would assist the Washington court in moving forward with custody decisions for the California court to take evidence regarding E.J.’s injuries and provide transcripts to the Washington court. Christian S., William S. and A.J. also continued to oppose dismissal of the petition and requested that the court call the Washington court.

⁵ Mother filed a petition for writ of mandate or prohibition in this court on February 5, 2015 (Docket No. A144180). The petition was dismissed on March 2, 2015, at Mother’s request because “[t]he matter ha[d been] resolved in the trial court.”

On February 26, 2015, Christian S.’s counsel filed a brief opposing dismissal, which attached a copy of a court order from King County, Washington, signed the day before, awarding “full physical and legal custody” of E.J. to Christian S., “pending further order of this Court” (February 2015 Washington custody order). In seeking that order, Christian S. had informed the Washington court of the California dependency proceeding and E.J.’s medical emergency. The February 2015 Washington custody order included a temporary restraining order on behalf of Christian S. and his children, protecting them against Mother’s disturbing their peace, that was to remain in effect until the next scheduled hearing on March 25, 2015. The February 2015 Washington custody order specified that it would “have no effect” on the orders previously issued by the California court, presumably meaning that supervised visitation for Mother could continue. The February 2015 Washington custody order was admitted into evidence at the hearing on the Agency’s petition.

E. The juvenile court’s order dismissing the dependency petition

The juvenile court did not contact the Washington court and gave no reasons. The judge indicated she had read and considered all of the briefing and evidence. Without articulating her reasons further, she dismissed the petition and vacated the future hearing dates. E.J. filed a timely notice of appeal from the February 26 order. No other party appealed.

II. DISCUSSION

E.J. argues on appeal: (1) the juvenile court erred in dismissing the petition without communicating first with the Washington court; (2) the court abused its discretion in granting the Agency’s section 388 petition; (3) the court misinterpreted its duty under the UCCJEA and failed to consider the child’s best interests in dismissing the petition; and (4) the court had temporary emergency jurisdiction under the UCCJEA, and that jurisdiction never expired. Christian S. joins in E.J.’s arguments. Both the Agency and Mother filed briefs responding to E.J.’s opening brief.

The court’s ruling on a petition under Welfare and Institutions Code section 388 is ordinarily reviewed for abuse of discretion (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437,

446–447), and the Agency advocates that we apply that standard. On questions involving statutory construction, however, including construction of the UCCJEA, our review is de novo. (*Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1287.) Because we conclude that all of E.J.’s issues are fully resolved by reference to the UCCJEA, we exercise independent review in disposing of this appeal.

A. The California court had no jurisdiction to continue making child custody determinations after February 25, 2015, and its failure to communicate with the court in Washington was harmless error.

1. Overview of the UCCJEA

The UCCJEA is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws (Commissioners) that has been adopted in all 50 states, and was adopted in California in 1999 and in Washington in 2001. (9 pt. IA West’s U. Laws Ann. (2016 Supp.) UCCJEA, Table of Jurisdictions Wherein Act Has Been Adopted, pp. 126–127; § 3400 et seq., added by Stats. 1999, ch. 867, § 3, eff. Jan. 1, 2000; Wash. Rev. Code § 26.27.011 et seq.) It is the “exclusive means of determining subject matter jurisdiction in custody disputes involving other jurisdictions.” (*In re Marriage of Fernandez-Abin & Sanchez* (2011) 191 Cal.App.4th 1015, 1037.) Prior to its adoption, a different uniform code, the Uniform Child Custody Jurisdiction Act (UCCJA), had been in effect in California since 1974. (Civ. Code, former § 5150 et seq., added by Stats. 1973, ch. 693, § 1 and repealed by Stats. 1992, ch. 162, § 3, eff. Jan. 1, 1994; Fam. Code, former § 3400 et seq., added by Stats. 1992, ch. 162, § 10 and repealed by Stats. 1999, ch. 867, § 2, eff. Jan. 1, 2000.) The UCCJA proved not to be the fix-all that the Commissioners had envisioned in large part because it spawned custody litigation in multiple jurisdictions with competing orders. In replacing it with the UCCJEA, a primary goal was to eliminate the confusion generated under the UCCJA by conflicting orders when more than one state exercised custody jurisdiction over the same child. (*In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 497–498 (*Marriage of Nurie*); 9 pt. IA ULA (1999) Prefatory Note to UCCJEA, pp. 650–651 & coms. to §§ 201–204, pp. 672, 674, 676–678.)

The Commissioners decided the way to solve the problem of competing custody orders was to allow only one state to exercise jurisdiction at any given time, and to enforce strict limitations on the exercise of jurisdiction by any other state. (§ 3426; 9 pt. IA U. Laws Ann., *supra*, UCCJEA, com. to § 206, p. 681.) The UCCJEA was designed to accomplish this by giving the child’s home state absolute priority in issuing initial custody orders (§ 3421; *Brewer v. Carter* (2013) 218 Cal.App.4th 1312, 1317; *Marriage of Nurie, supra*, 176 Cal.App.4th at p. 491),⁶ making the issuing state’s jurisdiction exclusive and continuing (§ 3422), and allowing another state court to modify the provisions of a pre-existing custody order only upon meeting certain stringent criteria that were not met here (§ 3423). Once a state properly exercises modification jurisdiction, it has continuing and exclusive jurisdiction, and the state that issued the pre-existing order loses jurisdiction. (§ 3422, subd. (a).) These provisions work together to ensure that, except in an emergency, only one state exercises jurisdiction at a time. (*Keisha W. v. Marvin M.* (2014) 229 Cal.App.4th 581, 585; *In re Marriage of Fernandez-Abin & Sanchez, supra*, 191 Cal.App.4th at p. 1037; *Marriage of Nurie*, at pp. 497–498.)

The UCCJEA allows a single limited exception to the one-state-at-a-time rule: a state in which the child is located may respond to an emergency by making temporary custody orders, after which the court with continuing, exclusive jurisdiction normally resumes making custody orders. (§ 3424.) But temporary emergency jurisdiction is intended to be just that: temporary. It was never “ ‘contemplated to be a vehicle for a state to attain modification jurisdiction on an ongoing basis or for an indefinite period of time.’ ” (*In re C.T.* (2002) 100 Cal.App.4th 101, 112 (*C.T.*)). Although a court asserting temporary emergency jurisdiction may later assume a broader nonemergency jurisdiction by becoming the home state of the child, E.J. did not stay in California long enough for that to happen. (§ 3424, subd. (b); *In re Gino C.* (2014) 224 Cal.App.4th 959, 966 (*Gino*

⁶ The statutes provide for a hierarchy of alternative, subordinate bases of jurisdiction if no state can exercise home state jurisdiction, or the home state has “declined to exercise jurisdiction” (§ 3421, subds. (a)(2)–(a)(4)), but none of those apply here because all depend upon the absence of home state jurisdiction.

C.) [“[T]he statute precludes a child custody determination by a court exercising temporary emergency jurisdiction from becoming final *until this state becomes the child’s home state*” (italics in original)].) Quoting from the California legislative history, *Gino C.* held “the UCCJEA provides for ‘temporary emergency jurisdiction, that can ripen into continuing jurisdiction *only if no other state with grounds for continuing jurisdiction can be found or, if one is found, that state declines to take jurisdiction.*’ ” (*Id.* at p. 967, italics and underline in original.)

Some California cases have examined temporary emergency jurisdiction as if its duration were measured by the duration of the emergency. (*C.T., supra*, 100 Cal.App.4th at pp. 112–114; *In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1349–1350 (*Jaheim B.*) [“Although emergency jurisdiction is generally intended to be short term and limited, the juvenile court may continue to exercise its authority as long as the reasons underlying the dependency exist.”]; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1175 [“an emergency can exist so long as the reasons underlying the dependency exist”].) We think that approach is somewhat misdirected. The UCCJEA itself does not speak of extending emergency jurisdiction for the duration of the emergency, but rather indicates that temporary emergency jurisdiction lasts only “*until an order is obtained from*” a state having continuing, exclusive jurisdiction. (§ 3424, subs. (b) & (c), italics added.) We therefore are not called upon to answer whether E.J. was still in an emergency situation after he returned to Washington, but rather whether Washington had asserted or resumed jurisdiction over his custody, which is a more readily ascertainable and less subjective determination.

2. Washington had home state jurisdiction over E.J.’s custody

The parties do not agree whether Washington was E.J.’s home state under the UCCJEA, even though he lived there all his life save for his two unhappy months in California. E.J. appears to argue that Washington lost its status as his home state immediately upon Mother’s moving him to California shortly before the dependency petition was filed. He emphasizes that Mother and Paul C. intended to “start a new life” in California, he refers to himself and his mother as “California residents,” and calls

California his “new home state.” To the extent E.J. suggests that California had become his new “home state” as defined in the UCCJEA, he is wrong. A child older than six months must have lived in a state for at least six months before it becomes his home state. (§ 3402, subd. (g); see fn. 3, *ante.*) California never became E.J.’s home state, for he had been present in the state for only 17 days when the dependency petition was filed and stayed for a total of just over two months.

Likewise, E.J.’s argument that California should have—or even could have—elected to continue adjudicating custody issues in the dependency action, while Washington adjudicated those same issues in family court, flies in the face of the one-state-at-a-time rule so central to proper operation of the UCCJEA. A child’s home state does not automatically lose jurisdiction immediately after the child leaves the state. Rather, a home state may exercise initial jurisdiction over a child custody matter if it “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.*” (§ 3421, subd. (a)(1), italics added; accord, Wash. Rev. Code § 26.27.201, subds. (1)(a) & (2).) This provision allows the home state to exercise jurisdiction when one of the parents has absconded with a child to a new jurisdiction, even if the departing parent intends to remain in the new state permanently. (9 Pt. IA U. Laws Ann., *supra*, UCCJEA, com. to § 201, p. 672.) The parent remaining in the home state is not immediately deprived of a home state forum. Thus, despite Mother’s departure with the children to California, Washington continued to have *exclusive* nonemergency jurisdiction to adjudicate E.J.’s custody as the child’s home state. (§§ 3421, 3422; Wash. Rev. Code §§ 26.27.201, subd. (1)(a) & (2), 26.27.211, subd. (1); see *Gino C.*, *supra*, 224 Cal.App.4th at p. 967 [where home state was identified, failure to contact home state before jurisdictional hearing was reversible error, even though no prior custody order had been issued in home state].) Washington continued to have home state jurisdiction both when the dependency petition was filed in California and when it

was dismissed, for both dates were within the six-month period following E.J.'s departure from Washington. Washington was and is E.J.'s home state.

3. The California court had temporary emergency jurisdiction only

When the court in San Mateo County initially detained the children, it did not have jurisdiction to make an initial custody order (§ 3421) or to modify another state's custody order (§ 3423). The only basis upon which it could lawfully assert jurisdiction was to address the emergency with which E.J. was confronted. (§ 3424.) California could exercise temporary emergency jurisdiction because E.J. was "present in this state," and it was "necessary in an emergency to protect the child because the child, or a sibling or parent of the child, [was] subjected to, or threatened with, mistreatment or abuse." (§ 3424, subd. (a).) No party has asserted, nor could they reasonably assert, that E.J.'s injuries did not amount to a true emergency which necessitated immediate intervention, nor does anyone dispute that California properly assumed temporary emergency jurisdiction in the circumstances. (See *C.T.*, *supra*, 100 Cal.App.4th at p. 108 [California court may issue detention order under § 3424, but may not make jurisdictional finding].) The issues raised in this appeal instead challenge certain irregularities in the proceeding that resulted in dismissal of the petition, especially the juvenile court's failure to call the Washington family court to discuss E.J.'s case before dismissing the petition.

All of the parties cite *C.T.* prominently. In that case, Arkansas was the child's home state, and it had issued an order in 1998 granting C.T.'s father primary custody, with visitation for the mother, who moved to California after the couple separated. (*C.T.*, *supra*, 100 Cal.App.4th at p. 104.) While C.T. was visiting her mother in California, she disclosed that her father had sexually molested her in Arkansas. (*Ibid.*) Her mother sought an order in family court to keep C.T. in California and away from her father. (*Id.* at pp. 104–105.) The California family court notified the Arkansas court that it was assuming temporary emergency jurisdiction. (*Id.* at p. 105.) Shortly thereafter, the California child welfare agency instituted dependency proceedings. (*Ibid.*) At the detention hearing, as in the present case, the court made a prima facie finding that C.T.

came within the statutory definition of a dependent child and ordered her detained in the mother's home. (*Ibid.*)

C.T.'s father then asked the juvenile court to hold an evidentiary hearing to determine whether the court was properly taking emergency jurisdiction under the UCCJEA. (*C.T.*, *supra*, 100 Cal.App.4th at p. 105.) The court declined to do so, held a jurisdictional hearing on the petition, and found C.T. was a dependent child. The juvenile court then contacted the court in Arkansas, which “ ‘refused to allow [the California] court to have further jurisdiction over the matter,’ and requested the matter be transferred to Arkansas.” (*Ibid.*) The two judges then agreed C.T. would remain in the mother's custody until further action by the Arkansas court, and the California court would provide the record and transcripts from the jurisdictional hearing to the Arkansas court. The California court thereafter ordered C.T. placed with her mother “pending further order of the Arkansas court, to which it sent a copy of the file and transcripts, and terminated” its own jurisdiction.⁷ (*Ibid.*)

Both C.T.'s mother and father appealed in California, the father claiming the juvenile court should have held an evidentiary hearing on the existence of an emergency before exercising jurisdiction under section 3424 and should have communicated with the Arkansas court immediately after the dependency petition was filed. (*C.T.*, *supra*, 100 Cal.App.4th at pp. 106, 110.) He argued the court erred in making a true finding on the jurisdictional allegation in the absence of those procedures. (*Id.* at pp. 104, 106.) The mother, on the other hand, claimed the juvenile court erred in terminating dependency jurisdiction. (*Id.* at p. 104.) The Fourth District, Division One, held (1) the court should have conducted an evidentiary hearing separate from the jurisdictional hearing (*id.* at

⁷ That is essentially the same outcome we have here (i.e., placement with the non-offending parent pending a future hearing in the home state) without the salutary elements of communication and agreement. But in *C.T.*, the child had not returned to the home state and still California deferred to its home state jurisdiction. (*C.T.*, *supra*, 100 Cal.App.4th at pp. 104–105.) Because E.J. has returned to his home state, Washington has an even greater state interest in asserting home state jurisdiction in this case than did Arkansas in *C.T.*

pp. 107–110);⁸ (2) the court should have contacted the Arkansas court sooner (*id.* at pp. 110–111); (3) the temporary order placing C.T. with her mother should have specified its limited duration, but was otherwise authorized under the UCCJEA (*id.* at pp. 109–110); (4) the court should not have made a jurisdictional finding under Welfare and Institutions Code section 300 (*id.* at p. 109); and (5) the errors in failing to hold a separate evidentiary hearing, failing to specify a time limit on its placement order, and failing to contact the Arkansas court earlier were harmless (*id.* at pp. 109–111). The court reversed the jurisdictional finding but affirmed the order terminating jurisdiction. (*Id.* at pp. 113–114.)

In *C.T.*, the Court of Appeal concluded “the emergency ended” when the Arkansas court stated it was willing to address the custody issue, subject to the temporary custody order in California. (*C.T.*, *supra*, 100 Cal.App.4th at p. 113.) As we have noted, the key jurisdictional fact was that Arkansas was willing to resume home state jurisdiction, not that the emergency itself had ended. Once Arkansas resumed jurisdiction, and as long as temporary orders were in place to protect the parties while the Arkansas court pursued its processes, California had no further jurisdiction to issue final custody orders. (*Id.* at pp. 108, 113; § 3424, subd. (c).)

The parties also cite *Jaheim B.*, *supra*, 169 Cal.App.4th 1343 as a leading case on temporary emergency jurisdiction. In that case the minor had been raised in Florida by his mother for his first two years, after which they moved to San Diego. (*Id.* at pp.1346, 1350.) After they had been in California for about five months, a dependency proceeding was initiated because the boy’s mother abandoned him in a parking lot. (*Id.* at p. 1346.) Jaheim’s father was in prison in Alabama. (*Id.* at p. 1347.) After the court declared Jaheim a dependent child, his father appealed, claiming California was without

⁸ *Cristian I.* held a dependency detention hearing may serve as the evidentiary hearing for determining whether an emergency exists that requires court intervention within the statutory terms. (*Cristian I.*, *supra*, 224 Cal.App.4th at pp. 1099–1100 & fn. 10; § 3424, subd. (a).) We agree with that assessment and find the detention hearing served that purpose in this case.

jurisdiction, which he claimed rested solely in the Florida courts, as Jaheim's home state. (*Id.* at pp.1347–1348.) No prior custody orders had been issued in Florida. (*Id.* at p. 1351.)

The Fourth District, Division One concluded that Jaheim had no home state. He had not lived in California long enough to make it his home state and he had not lived in Florida for six consecutive months before the petition was filed in California. (*Jaheim B.*, *supra*, 169 Cal.App.4th at p. 1350.) The six-month extension of home state jurisdiction discussed above did not apply because no parent remained in Florida. (§ 3421, subd. (a)(1).) The California appellate court concluded the juvenile court had temporary emergency jurisdiction. (*Jaheim B.*, at p. 1350.) There was no pre-existing custody order in Florida, but the California court in *Jaheim B.* did contact the appropriate court in Florida. (See *Gino C.*, *supra*, 224 Cal.App.4th at pp. 966–967.) After learning of the proceedings in California, the Florida court informed the California juvenile court there was no case pending in that county relating to Jaheim. “Absent an action in Florida for protection of Jaheim, the California juvenile court properly had jurisdiction to act.” (*Jaheim B.*, at p. 1351.) The California appellate court concluded that, once the juvenile court declared Jaheim a dependent and removed him from parental custody, its “ ‘temporary emergency jurisdiction [had] ripened into permanent jurisdiction and California became [his] home state.’ ” (*Ibid.*) It appears Jaheim remained in California after the detention hearing and thus passed the six-month residency requirement before the court made a final custody order. (*Id.* at pp. 1346–1348.) Accordingly, continued exercise of jurisdiction was specifically authorized under section 3424, subdivision (b).

Finally, the parties cite *In re Cristian I.* (2014) 224 Cal.App.4th 1088 (*Cristian I.*), each claiming the case favors their position. *Cristian I.* is factually similar to this case but legally distinct. In that case, a mother and her new husband took six-year-old Cristian from his home state of Arizona and established a new home in California, while Cristian's father remained in Arizona. (*Id.* at p. 1092.) An Arizona family court had earlier issued a custody order favoring Cristian's mother, but soon after she left the state with Cristian, the boy's father initiated post-judgment custody proceedings seeking

custody. (*Ibid.*) After Cristian had been in California six months, a dependency petition was filed in this state alleging that his stepfather had severely abused and tortured him, prompting the California court to detain Cristian using temporary emergency jurisdiction. (*Id.* at pp. 1093–1094.) The department was given discretion to release Cristian to his non-offending father in Arizona, which it did before the jurisdiction hearing was held. (*Id.* at pp. 1094–1095.)

When Cristian’s father then informed the Arizona court of the abuse in California, the Arizona court voluntarily ceded jurisdiction to California, finding Arizona was an inconvenient forum. (*Cristian I., supra*, 224 Cal.App.4th at p. 1095.) Arizona’s decision appears to have been made without any input from the California court, which, though it had been aware of the Arizona proceedings from the outset, never contacted the Arizona court. (*Id.* at p. 1099.) The California court moved forward and sustained the petition, denied the mother reunification services, and placed Cristian with his father in Arizona. (*Id.* at p. 1096.) The court retained jurisdiction over Cristian, even though he was doing well with his father, “because of the severity of the trauma.” (*Ibid.*)

Cristian’s mother appealed in California, citing as error the California court’s failure to communicate with the Arizona court. She claimed the California court’s failure to contact Arizona deprived her of an opportunity to provide input on the jurisdictional issue. (*Cristian I., supra*, 224 Cal.App.4th at pp. 1091–1092, 1099.) But the Second District, Division Seven found the failure to communicate and related alleged irregularities to be harmless error. (*Id.* at p. 1101.) The appellate court found the juvenile court’s procedures “flawed,” but because it had merely detained Cristian prior to communicating with the Arizona court, and postponed the jurisdiction hearing until after Arizona had ceded jurisdiction, the California court “substantially complied with the essential procedural requirements of the UCCJEA and fully satisfied the central goals of the act.” (*Id.* at p. 1099.) Thus, despite the procedural flaws, the alleged errors were deemed harmless.

There are two important distinctions between this case and *Cristian I.* First, Cristian had been in California just over six months when the dependency petition was

filed. (*Cristian I.*, *supra*, 224 Cal.App.4th at p. 1093.) This brought California within the definition of his home state, but due to the pre-existing jurisdiction in Arizona, California could not immediately exercise modification jurisdiction. (§ 3423.) When Arizona relinquished jurisdiction (less than six months after Cristian left California, leaving his mother behind), California still had authority to exercise home state jurisdiction under section 3421, subdivision (a)(1), and consequently had modification jurisdiction under section 3423. At the very least, Cristian had a significant connection to California (§ 3421, subd. (a)(2)) so that, after Arizona relinquished jurisdiction, California could assume continuing, exclusive modification jurisdiction. (§§ 3422, 3423.) In the present case, California never acquired home state status, and even “significant connection” jurisdiction is doubtful, now that E.J. and Mother have both left the state.⁹

Second, the Arizona court’s response to the California dependency court’s exercise of temporary emergency jurisdiction made *Cristian I.* dramatically different from the present case. In contrast to Arizona’s refusal to act, when the Washington court was informed of the California proceedings in E.J.’s case, it promptly awarded temporary custody to Christian S. and issued a temporary restraining order against Mother. The message conveyed was entirely different from the Arizona court’s.

The foregoing cases and statutes lead us to the following conclusions. For purposes of determining whether California had continuing jurisdiction to issue custody orders, it does not matter whether the Parentage Order qualified as a UCCJEA-recognized custody order, for the February 2015 Washington custody order clearly qualified (Wash. Rev. Code § 26.27.201, subd. (1)(a)), and its issuance within six months after E.J. first left Washington constituted an exercise of home state jurisdiction by Washington, which, by statutory design, deprived California of any further custody

⁹ The emergency jurisdiction statute itself provides that the emergency state may later exercise home state jurisdiction. (§§ 3421, subd. (a)(1), 3424, subd. (b).) The court in *C.T.* suggested that an emergency-jurisdiction court also might exercise nonemergency jurisdiction thereafter if it could acquire such jurisdiction under sections 3421 or 3423. (*C.T.*, *supra*, 100 Cal.App.4th at p. 113.)

jurisdiction. (§ 3424, subs. (b) & (c); Wash. Rev. Code, § 26.27.201, subd. (1)(a).) The fact that the Washington proceeding was then in family court rather than dependency court makes no difference. Both dependency and family court custody orders are “child custody determination[s]” under the UCCJEA and both are “child custody proceeding[s].” (§ 3402, subs. (c) & (d); see also, *C.T.*, *supra*, 100 Cal.App.4th at pp. 113–114.)

4. The California court should have communicated with the Washington court in October 2014

Nevertheless, E.J. argues that the judge erred as a matter of law in dismissing the case without first calling or otherwise contacting the court in Washington to ascertain “whether the sister state court wishes to continue its jurisdiction and how much time it requires to take appropriate steps to consider further child custody orders.” Section 3424, subdivision (d) does require a court in which a request for a temporary emergency custody order has been made to communicate with another court having home state or other nonemergency jurisdiction “immediately” “upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by” such a court. The statute could scarcely be clearer, and its provision is triggered no matter how the court comes into possession of the information. The purpose of the communication is “to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.” (*Ibid.*) Communication between courts of different states is authorized in any case arising under the UCCJEA. (§ 3410.) In a case such as this, where California has temporary emergency jurisdiction only, such communication is statutorily mandated by use of the word “shall.” (§ 3424, subd. (d).)

Accordingly, the juvenile court judge should have communicated with the Washington court and should have done so at an earlier point in the proceedings. The jurisdiction report said there was an “open Family Law case in Washington state” relating to E.J., with a case number provided, though an erroneous one. (See fn. 2, *ante.*) Thus, we conclude the court should have attempted to communicate with the Washington court

on E.J.'s behalf by mid-October 2014. The UCCJEA no doubt demands early compliance because that is when communication most usefully will allow the two courts to cooperate in addressing the emergency and establishing the duration of the temporary order. The court here failed to abide by that obligation at that time, and it failed again in January and February 2015, when it was specifically asked to comply. The judge appears to have been unaware of the requirements of the UCCJEA or unwilling to comply because the requirements made "no sense" to her.

Indeed, prior to the filing of Mother's motion to dismiss, nothing in the record suggests the juvenile court recognized it had only temporary jurisdiction for purposes of the immediate emergency, nor is there any evidence it was aware of the applicability of the UCCJEA at all. Juvenile courts must be especially vigilant to recognize the potential applicability of the UCCJEA whenever out-of-state custody orders are disclosed in the social worker's report or otherwise. The UCCJEA exists at the intersection of dependency and family law, and the courts must be aware of its limits on their jurisdiction. Yet, the UCCJEA appears to have initially escaped the parties' notice as well, for no one suggested until the end of December 2014 that the California court's continuing jurisdiction might be in doubt, and no specific request was made for the court to communicate with the Washington court until even later. The parties' failure to request communication does not matter, though. The statute imposed that duty directly upon the court. (§ 3424, subd. (d).) Thus, we conclude the court erred in failing to contact the court in Washington at any time during the dependency proceeding.

Nevertheless, the statutory requirement of court-to-court communication has been deemed "directory" rather than "mandatory," meaning governmental action linked to the communication requirement is not automatically invalidated by the court's error; rather, a showing of prejudice is required. (*Cristian I.*, *supra*, 224 Cal.App.4th at p. 1101; *C.T.*, *supra*, 100 Cal.App.4th at p. 111; see *In re M.M.*, *supra*, 240 Cal.App.4th 703, 718 [*Watson* standard applies].) Thus, reversal of the court's order is not called for unless E.J. can show a reasonable probability of a more favorable outcome in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

5. The court's failure to contact the Washington court was harmless error

The Agency suggests that any failure by the court to communicate with the Washington court was harmless error. (See *In re A.M.* (2014) 224 Cal.App.4th 593, 597–600 [California court erred in failing to contact court in Mexico, which was children's home state, but error was harmless because emergency jurisdiction was proper in California; case remanded for limited purpose of making contact to determine if Mexico would assume jurisdiction].) Given the court's overall compliance with the UCCJEA—though apparently more by luck than by reason—we agree. Failure to call the court in Washington could only have been prejudicial if such a phone call could have led to the California court's continued exercise of jurisdiction. But, as we have discussed, dismissal of the petition was not discretionary; it was mandated after the resumption of jurisdiction by the Washington court. The UCCJEA simply does not countenance the continued maintenance of two simultaneous proceedings to determine custody, and the notion that Washington might have voluntarily ceded jurisdiction to California is far-fetched in the circumstances. Along with all of the other factors supporting jurisdiction in Washington, we note that it appears the abuse began there, as Mother was aware of it before she and Paul C. took the children to California.

By the time the petition was dismissed, the matters to be addressed in the phone call—resolution of the emergency, protection of the parties, and duration of emergency orders—had already been determined. E.J. had received the emergency surgery he needed, was recovering from his injuries, and was thriving in his father's home. Mother and E.J. had been protected from Paul C. by restraining orders. Washington had already exercised jurisdiction by issuing the temporary February 2015 Washington custody order. (§ 3402, subd. (c) [temporary custody orders qualify under UCCJEA].) The duration of California's temporary orders had been determined based on the date of that order.

Though E.J. suggests the California court should have attempted to persuade Washington to relinquish jurisdiction, it had no duty to do so at E.J.'s behest, and evidently no inclination to do so on its own motion. And any suggestion that the

California court might have persuaded the Washington court to allow California to take continuing jurisdiction of E.J.'s custody is sheer speculation at best. The point of the mandated inter-jurisdictional communication is not to provide an open-ended opportunity for the emergency court to negotiate for expanded jurisdiction. Nor is it necessary in such a communication for the courts to discuss which of them should continue to exercise jurisdiction based on a weighing of conveniences or equities. The UCCJEA itself dictates the jurisdictional priorities. Given what has already transpired, we find it highly unlikely Washington would have declined jurisdiction, even if the California court had contacted it.

Finally, E.J. points out that Paul C. had bailed out of jail and absconded, and his whereabouts were unknown. He thus argues there is an ongoing emergency and suggests he remains potentially at risk of harm by Paul C. He claims the court erred in failing to consider his best interests before dismissing the petition, as is normally required under Welfare and Institutions Code section 388. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641–642.) As we have explained, however, it is misguided to focus on whether there is an ongoing emergency. Rather, the correct focus is on identifying another state that appears to have continuing, exclusive jurisdiction, bringing that court into the loop as quickly as possible, and then deferring to that court's superior jurisdiction. If that court is willing and able to assume jurisdiction to protect the child, then the court with emergency jurisdiction must bow out. When the disputed issue is jurisdiction, the statutory limitations govern and the child's best interests do not play a significant role. "[T]he UCCJEA in fact 'eliminates the term "best interests" from the statutory language to clearly distinguish between the jurisdictional standards and substantive standards relating to child custody and visitation.' " (*Marriage of Nurie, supra*, 176 Cal.App.4th at p. 492.)

Washington now has home state jurisdiction and presumably will watch out for E.J.'s best interests going forward. It also is in a better position to protect him, since he now lives there. Despite the fears expressed in E.J.'s briefing regarding the fact that the Washington action was pending in family court, we note Washington does provide a mechanism for reporting and responding to child abuse. (Wash. Rev. Code §§ 13.34.030,

26.44.030, subd. (3).) The Washington family court is aware of the dependency proceedings in California and the abuse to which E.J. was subjected. The parties are also equipped with full copies of the Agency's reports prepared in connection with the California dependency proceeding and supporting documentation, which they can and presumably will supply (or already have supplied) to the Washington court.

III. DISPOSITION

The court's order dismissing the petition is affirmed. The clerk of this court is directed to send a copy of this opinion to the King County Superior Court in Washington, addressed to the attention of the judge now presiding over docket number 12-5-00382-4 KNT.

Streeter, J.

We concur:

Ruvolo, P.J.

Reardon, J.