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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.L., a Person Coming Under the
Juvenile Court Law.

B248791
(Los Angeles County
Super. Ct. No. CK88536)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEVIE L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Reversed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.), Stevie L. (Father) appeals from the juvenile court's April 4, 2013 jurisdictional/dispositional order regarding his five-year-old son, D.L. As the Los Angeles County Department of Children and Family Services (DCFS) concedes, the juvenile court improperly assumed jurisdiction over D.L. because he resided out of state. Accordingly, we reverse the order.

BACKGROUND

In or about April 2012, D.L. moved from California to Las Vegas, Nevada with his mother, M.M. (Mother),¹ two siblings, and half sibling, after prior dependency proceedings involving Mother and the children were closed. Father continued to reside in California. Apparently, there were no allegations against Father in the prior dependency case.

After the move to Nevada, D.L. did not see Father until January 2013, when Mother brought D.L. and his siblings to California because the children's maternal grandmother was ill. On January 9, 2013, Mother returned to Nevada with D.L.'s siblings, but D.L. wanted to stay for a longer visit with Father. Mother planned to return to California on January 12, 2013 to pick up D.L. and bring him home to Nevada.

On January 10, 2013, the day after Mother returned to Nevada, the Los Angeles County Sheriff's Department (LASD) executed a search warrant at Father's residence in Compton and arrested him for possession of marijuana and cocaine for sale, after finding 43 marijuana plants, bags of marijuana, and 0.2 grams of cocaine, among other things, in Father's home. LASD contacted DCFS because D.L. was present at the home and in Father's care. DCFS took D.L. into protective custody and placed him with a paternal great-aunt.

On January 15, 2013, DCFS filed the dependency petition in this case regarding D.L. The petition included one count (b-1), alleging Father's January 10, 2013 arrest and possession of marijuana and cocaine, and his prior convictions for possession of marijuana and cocaine for sale, and alleging Mother knew or reasonably should have

¹ Mother is not a party to this appeal.

known about the marijuana plants in Father's home. At the January 15, 2013 detention hearing, the juvenile court ordered D.L. detained from Father and released to Mother.

At the April 4, 2013 jurisdiction/disposition hearing, counsel for D.L., Father, and Mother asked the juvenile court to dismiss the petition because D.L. resided out of state with Mother. In the alternative, Father's counsel argued there was insufficient evidence demonstrating Father placed D.L. at risk of harm. Mother's counsel argued there was insufficient evidence demonstrating Mother failed to protect D.L. Counsel for DCFS argued there was sufficient evidence to sustain count b-1 as to Father.

As DCFS requested, the juvenile court struck the language in count b-1 regarding Mother and sustained the amended allegation as to Father only. The court declared D.L. a dependent of the court and ordered him placed with Mother. The court then terminated jurisdiction with a family law order granting Mother sole legal and physical custody of D.L. and awarding Father monitored visitation. Father objected to the court's orders.

DISCUSSION

Father appealed from the April 4, 2013 jurisdictional/dispositional order.² DCFS did not file a respondent's brief on appeal. Instead, DCFS filed a letter brief conceding that this court should reverse the April 4, 2013 order because the juvenile court improperly assumed jurisdiction over D.L. whose "home state is Nevada."

As the parties agree, "The Uniform Child Custody Jurisdiction and Enforcement Act (the Act) (Fam. Code, § 3400 et seq.) is the exclusive method for determining subject matter jurisdiction for custody proceedings in California, and its provisions apply to juvenile dependency proceedings. (Fam. Code, § 3402, subd. (d); *In re Stephanie M.* (1994) 7 Cal.4th 295, 310.) Under the Act, a California court has jurisdiction in a dependency case if California was the child's home state when the proceeding commenced, with 'home state' defined as the state in which the child lived with a parent

² At the time Father appealed, the day after the jurisdiction/disposition hearing, a separate family law order had not been filed. The record on appeal does not include a family law order. The April 4, 2013 order Father appealed from, however, sets forth the terms of the family law order as specified by the juvenile court.

for at least six consecutive months immediately before the commencement of the proceeding. (Fam. Code, §§ 3402, subd. (g), 3421, subd. (a)(1), 3422.)” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 245-246.) Here, it is undisputed that D.L.’s home state at the time this proceeding commenced (and at all relevant times thereafter) was Nevada. He had lived with his Mother in Nevada for more than six consecutive months immediately before DCFS commenced these proceedings.

Under Family Code section 3424, subdivision (a), “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.” As the parties agree, this provision is inapplicable here. The juvenile court did not assume temporary emergency jurisdiction over D.L., and there was no basis to do so as the court released D.L. to Mother at the detention hearing. Moreover, “[a]ssumption of emergency jurisdiction does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition,” as the juvenile court did in this case. (*In re C.T.* (2002) 100 Cal.App.4th 101, 108.)

As DCFS concedes, the juvenile court improperly assumed jurisdiction over D.L. Accordingly we reverse the April 4, 2013 jurisdictional/dispositional order, which sets forth the terms of the family law exit order. Without jurisdiction, the court could not have issued the family law exit order.

DISPOSITION

The April 4, 2013 order is reversed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

MILLER, J.*

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