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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

A.H.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E058758

(Super.Ct.No. J245416)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Kersey,  
Judge. Petition denied.

Monica Cazares for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,  
for Real Party in Interest.

A.H. (father) seeks writ review of the decision of the juvenile court to terminate reunification services and set a hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> His sole challenge is to the subject matter jurisdiction of the juvenile court under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). We conclude that the court did possess subject matter jurisdiction and, so, deny the petition.

#### STATEMENT OF FACTS<sup>2</sup>

In August 2012, father was arrested in California for kidnapping M.H. (the minor) from her home in Arizona. Her mother was unable to come to this state to take custody of her due to lack of transportation, as well as an outstanding arrest warrant.

A San Bernardino County Children and Family Services (CFS) social worker spoke with a supervisor with the Arizona Children and Family Services who had reported that the family had received reunification services within the past year due to domestic violence and substance abuse. The minor was returned to the parents' care and the case was closed. The supervisor indicated another report was received three months later that mother relapsed and was drinking heavily again. Once more, the case was closed when mother could not be located and the minor was being appropriately cared for by father. Both parents have a criminal history.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> We will set forth a description only of those portions of the factual and procedural history of the case that are relevant to the issue of jurisdiction.

Thereupon, the minor was detained by CFS. At the August 6, 2012 detention hearing, CFS's counsel informed the juvenile court that the matter may be a "UCCJEA case" and requested the court take emergency jurisdiction. The court did so and scheduled the jurisdiction/disposition hearing for August 27, 2012.

In its jurisdictional report, CFS recommended that the court take jurisdiction but continue the disposition to allow staff to travel to Lake Havasu, Arizona, to assess mother's home for a possible return of the minor to her custody and dismissal of the case. Father was then incarcerated in Orange County jail, and it appeared he would probably be extradited back to Arizona. CFS maintained that this case rightfully belonged in the State of Arizona as both parents were residing in that state. In an effort to return the matter to Arizona, a CFS social worker contacted the Arizona child abuse hotline to make a report, but the Arizona intake specialist indicated that a referral could not be taken until the minor was back in Arizona. The latter suggested that CFS request the assistance of the Interstate Compact for Placement of Children (ICPC), but that would require taking formal jurisdiction of the matter, which was not CFS's intention.

At the August 27, 2012 hearing, CFS requested that the court take temporary jurisdiction and continue the matter for the disposition. A social worker intended to travel to Lake Havasu in the meantime to assess mother's home and substance abuse status. The court indicated it would need information about the prior dependency in Arizona to contact the judge there. The matter was then continued to September 27, 2012.

In an addendum, CFS recommended that the court take jurisdiction and transfer the case to Mojave County, Arizona. A CFS social worker had made an unannounced visit to the mother's Arizona home and found it stable and believed that the mother could care for the minor. There had been prior referrals for neglect, which were determined to be either unfounded or unsubstantiated. However, the Lake Havasu Police Department had been contacted and indicated that officers had been sent to the parents' home numerous times within the past few years regarding reports of domestic violence, disorderly conduct, and disturbing the peace. Mother tested positive for alcohol on September 19, 2012.

The court continued the September 27, 2012 jurisdiction/disposition hearing to the following day in order to contact the Mojave County Superior Court in Arizona. The next day, the court appointed counsel for mother and placed the minor in California jurisdiction, noting that mother would be contacted to pick up the child so that the case could be transferred to Arizona. The matter was once again continued, this time to October 19, 2012.

On October 19, 2012, the court noted that there were no pending custody cases in Arizona, and stated that it had been in contact with the Arizona judge who indicated a willingness to take jurisdiction once a petition was filed in that state. The court concluded that it had permission to take temporary jurisdiction from the judge in Arizona, and indicated it would e-mail the Arizona judge right then. There is no further indication in the record regarding contact with the Arizona judge. The court found it had

jurisdiction and continued the matter for a contested disposition hearing on November 2, 2012.

In its disposition report for the November 2 hearing, CFS recommended reunification services be provided to both parents and that the court authorize ICPC with Arizona so the minor's older half brother could be considered for placement. Prior to that date, father had been extradited to Arizona. Mother appeared in court but was taken into custody.

Mother was present but in custody for the continued disposition hearing on November 6, 2013. Mother was willing to perform services. Father's counsel also expressed his client's willingness to participate in services. The court ordered services and authorized CFS to initiate ICPC proceedings with Arizona.

By the time of the six-month review hearing in May 2013, both parents were out of custody and living in Arizona, although apparently not together. Neither parent visited with the minor, kept in contact with CFS, or attempted to engage in services. The court terminated services and set a hearing pursuant to section 366.26.

#### DISCUSSION

Father contends that pursuant to the UCCJEA, the court lacked jurisdiction in this matter since California was not the home state of either the parents or the minor, and

there was no other basis to assert jurisdiction. (Fam. Code, § 3421.<sup>3</sup>) He argues there is no evidence that the home state, Arizona, had declined to exercise jurisdiction.

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<sup>3</sup> Family Code section 3421 provides as follows: “(a) 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:

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

“(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

“(A) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

“(B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

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

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

“(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

“(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Family Code section 3424,<sup>4</sup> subdivision (a), provides that a court of this state has temporary emergency jurisdiction if the child is present here and has been abandoned or

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<sup>4</sup> Family Code section 3424 states as follows: “(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.

“(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

“(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, 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.

“(d) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423, inclusive, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

*[footnote continued on next page]*

it is necessary in any emergency to protect him or her. Here, father had just been arrested and was in custody; mother was unwilling or unable to come to this state to take custody of the minor. These facts are precisely the emergency conditions described in this statute warranting the exercise of temporary jurisdiction by California.

Moreover, because Arizona had closed its case and had not commenced another proceeding, the California court was entitled to exercise jurisdiction under subdivision (b) of Family Code section 3424. Its custody determination became a final determination pursuant to that subdivision because the record does not reveal that Arizona ever initiated proceedings in that state despite being contacted by the judge here as well as CFS. What evidence is in the record indicates that Arizona would not assume jurisdiction until the minor was present in that state.

We do note that the juvenile court here failed to record its communications with the Arizona judge, other than to indicate it had permission to take temporary jurisdiction. In fact, after indicating it would e-mail the Arizona judge, it failed to report any further communication. Family Code section 3410, subdivision (d), requires courts to record such communications, but it does not mandate that a court actually communicate with the court of another state. Here, the juvenile court was not *required* to communicate with the Arizona court in this situation. Communication is required only if there had been an

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“(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.”

existing custody order or the juvenile court here had been informed that Arizona had commenced a proceeding. (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1138, 1141; contrast *In re Joseph D.* (1993) 19 Cal.App.4th 678, 693.) We cannot presume from a silent record that Arizona had initiated proceedings in that state and that the juvenile court ignored the law. (*In re Angel L.*, at p. 1137 [Petitioner “has the burden of establishing error and, lacking an adequate record, a reviewing court will presume the evidence supports the judgment”].) The record need not affirmatively show that Arizona declined jurisdiction, but merely that it failed to initiate proceedings exercising jurisdiction. (*In re Jaheim B.* (2008) 169 Cal.App.4th 1343, 1351.)

Although “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; see also *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1175.) In this case, the temporary emergency jurisdiction of the San Bernardino County juvenile court ripened into permanent jurisdiction and its custody determinations became final. (Fam. Code, § 3424, subd. (b); *In re Angel L.*, at pp. 1139-1141.)

We feel compelled to make the following observations: CFS’s efforts to coordinate with its Arizona counterpart in order to transfer the case to that jurisdiction were ineffectual at best. CFS took the position initially that this was an Arizona case and would eventually be transferred there, but after the juvenile court assumed temporary jurisdiction, it treated it as an ordinary dependency case and made no serious efforts to transfer the case to Arizona under the ICPC. It is obvious that the parents’ reunification

efforts were hampered as a result. Although we deny the petition because we find that there is subject matter jurisdiction, further efforts should be made to transfer the matter to Arizona. We, therefore, urge the juvenile court to direct CFS to contact the appropriate Arizona agency<sup>5</sup> to have the matter transferred under the ICPC before it conducts the section 366.26 hearing or takes further action to terminate parental rights.

DISPOSITION

The petition is denied.

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RAMIREZ

P. J.

I concur:

CODRINGTON

J.

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<sup>5</sup> Calling an Arizona hotline would not be sufficient in this regard.

KING, J., Concurring.

I concur with the denial of the present petition. *In re Angel L.* (2008) 159 Cal.App.4th 1127 is basically on all fours with the present matter.

I write separately because the majority “urge[s] the juvenile court to direct CFS [real party in interest San Bernardino County Children and Family Services] to contact the appropriate Arizona agency to have the matter transferred under the ICPC [Interstate Compact for Placement of Children] . . . .” (Maj. opn., *ante*, at p. 10, fn. omitted.) First, the ICPC (Fam. Code, § 7900 et seq.) are not jurisdictional statutes, but rather deal with the placement of children once a court has assumed jurisdiction. Further, it is clear that CFS has been attempting, through ICPC, to place the minor. As is evident from the record, as late as May 2013, there were attempts to place the minor with Chris Heinrich, who is either an adult half sibling of the minor or an uncle of the minor.

Lastly, should the juvenile court find that returning custody to the father is not a detriment to the minor, the ICPC need not be complied with. (*In re Z.K.* (2011) 201 Cal.App.4th 51.)

KING  
\_\_\_\_\_ J.