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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.K. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

G052597

(Super. Ct. Nos. DP026490,
DP026491,
DP026492)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Craig E. Arthur, Judge. Affirmed. Request for judicial notice. Denied.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

* * *

S.B. (mother) appeals from the juvenile court's orders terminating temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (Fam. Code, § 3400 et seq.; statutory references are to the Family Code unless noted.) Mother contends the court should have continued its emergency jurisdiction so mother could travel to Utah and present her allegations the children were abused by their father and that she should be awarded custody. We conclude the court acted appropriately under the UCCJEA and therefore affirm the court's orders.

I

FACTUAL AND PROCEDURAL BACKGROUND

In August 2015, the Orange County Social Services Agency (SSA) filed a juvenile court petition (Welf. & Inst. Code, § 300, subd. (b) [section 300]) alleging 15-year-old J.K. (born May 2000), 13-year-old K.K. (born July 2002), and four-year old T.K. (born November 2010) were at substantial risk of suffering serious physical harm or illness. Specifically, the petition alleged mother had been arrested August 14, 2015, in Orange County after she fled Utah with her children in violation of a temporary custody order. The Utah court granted temporary sole legal and physical custody to father, and granted father a restraining order against mother on July 22. On August 3, the Utah court issued a writ authorizing law enforcement to remove the children from mother's custody, using reasonable force as necessary.

SSA's petition alleged the Utah court granted father temporary legal and physical custody based on findings mother had disrupted the children's relationship with father. According to SSA's petition, mother "placed the children's safety and general welfare in danger due to her unstable mental condition," she had "used illegal drugs in the home," allowed J.K. to use drugs, and had "discussed improper information with the children and . . . manipulated the children." The Utah court placed J.K. temporarily with

the maternal grandmother while the Utah Division of Child and Family Services (DCFS) investigated J.K.'s and mother's allegations father sexually abused J.K. SSA's petition declared mother's allegations were false.

SSA's detention report noted the children had been placed at Orangewood Children and Family Center. The report contained four prior child abuse referrals, apparently generated by mother. The reports, lodged before mother's arrest, elaborated on mother's and the children's claims of physical and sexual abuse by father. The report also noted mother absconded with the daughter of a jailed friend even though the child's father had primary custody of the friend's child at the time.

The social worker and a sheriff's investigator separately interviewed the children, including the unrelated child, on the day of mother's arrest. Four year-old T.K. was equivocal about whether father spanked her, admitting she did not like father, but felt safe with both parents. The older children allied themselves with mother, declaring mother took good care of them, there was no drug use in the home, and father was the aggressor in domestic violence against mother and the children. J.K. detailed father's sexual and physical abuse against her and mother. She supported mother's efforts to obtain a protective order and stated they left Utah before mother could be served with custody orders when father or his attorney located them at a Utah women's shelter.

Father reported mother initially obtained a temporary protective order. But in late June 2015, the court dismissed the case after finding mother not credible. He went to mother's house on July 5 to visit the children, but the family van was gone, and neighbors reported mother had conducted a yard sale the previous day. He hired an attorney and obtained restraining and temporary custody orders on July 22.

The social worker interviewed mother, who "presented with flat affect and appeared uninterested in [the] interview." Mother asserted J.K suffered serious emotional trauma from father's sexual abuse and the children witnessed father's domestic violence toward mother. She denied that father physically abused the children. She

stated the children should not be released to father, and provided the name of a maternal great aunt for placement.

A DCFS social worker, Stacy Esplin, stated she had investigated allegations concerning domestic violence and found “absolutely no evidence” to support those claims, noting the “children were unable to provide any details.” She also found no evidence father sexually abused J.K. A detective also came to the same conclusion, deducing mother had coached J.K., and law enforcement did not intend to pursue an investigation. The social worker had interviewed father on numerous occasions and found no reason for concern about his parenting.

At the detention hearing August 19, the juvenile court appointed counsel for the parents and the children. The court noted mother remained in custody and father remained in Utah. The juvenile court made temporary detention orders and trailed the case to the following day so mother could be transported from jail. The court noted the case appeared to fall under the UCCJEA and stated it would contact the Utah family court.

The following day, August 20, the court reported it had spoken with a Utah court commissioner involved in the parties’ family court case. The court advised the commissioner that Orange County had evidence to assert emergency jurisdiction, and the court intended to order SSA to urge DCFS to “open up a case . . . so that this court can transport the children from here to Davis County in protective custody and then let the courts there decide what ultimately happens regarding custody”

The juvenile court confirmed its detention orders and ordered SSA to contact DCFS. Because the Utah court had not declined jurisdiction, the court explained SSA had no authority to release the children to relatives. The court authorized one monitored weekly visit for mother while she was in custody and monitored phone contact for father. The court also authorized SSA to release the children to DCFS if Utah initiated a juvenile court case.

At the continued detention hearing the next day, the court noted it communicated with the Utah presiding juvenile court judge after the hearing the previous day. The Utah judge agreed to contact DCFS immediately. SSA subsequently notified the parties it intended to release the children to DCFS. But after speaking with counsel off the record, the court temporarily stayed its order releasing the children to DCFS until August 26 so the parties could brief whether the court should reconsider its order.

Minors' counsel filed a motion for reconsideration and accompanying declaration asking the court to continue emergency jurisdiction until "there is assurance from [DCFS] that the facts of this case have been seriously reconsidered, such that the children will be heard by the Utah court as to their fear of father and belief that other relatives will not protect them." Counsel noted the Utah social worker previously had determined there was no basis to file a dependency petition, and minors' "counsel fears that [DCFS] has already concluded that the children are not at risk in father's care, and that the statements of the children, the parents, and the collateral contacts (as obtained by . . . SSA and upon which this court found risk to return to either parent) will be dismissed."

At the August 26 hearing, minors' counsel again expressed "concern that once the case is received in Utah, that it won't get the kind of scrutiny that it would get here in Orange County." She cited statements from the Utah social worker, Esplin, that DCFS had investigated and found the allegations against father unfounded. She acknowledged mother could not travel to Utah because she was in custody at the Orange County jail and therefore could not present evidence to Utah authorities. Minors' counsel argued the UCCJEA allowed a court to briefly continue emergency jurisdiction to give an out-of-state party the opportunity to plead his or her case in the state with primary jurisdiction.

Mother joined in minors' counsel's comments. Counsel noted DCFS stated an intent to take the children into protective custody and file a juvenile court petition, but

it had not yet done so. Utah asserted it could not file a petition until the children returned to Utah. Mother's counsel stated "it would be premature to terminate emergency jurisdiction right now without knowing what information Utah and [the social worker] . . . were basing their findings on." Counsel suggested continuing emergency jurisdiction to allow mother to contest the Utah custody order.

Father's counsel argued the emergency no longer existed because DCFS had stated it would take the children into protective care and conduct a full investigation. SSA concurred, explaining that DCFS had assured SSA it would not release the children "immediately to father or any adult," the children would be placed in a shelter, and DCFS would file a petition once the children were received in Utah. SSA asked the court to lift its stay and allow SSA to release the children to DCFS.

The juvenile court lifted the stay and ordered SSA to release the children to DCFS forthwith. The court noted no party disputed Utah had primary jurisdiction over the children, and Utah had not declined to exercise jurisdiction. Utah authorities were aware of the allegations that came to light in the Orange County proceedings. The court stated it refused to second-guess DCFS and the Utah courts, and the court remained confident DCFS would file a petition and keep the children in protective custody until the matter was resolved. The court directed SSA to transfer copies of all reports, minute orders, and CAST interviews to DCFS. Mother filed a petition for extraordinary writ relief asking this court to overturn the court's order, but we denied relief on September 1, 2015.

The social worker's report for the September 17 hearing noted mother remained in the Orange County jail. The children visited her on August 31. After the visit, the children were taken to the airport, and released to Esplin and another DCFS social worker.

At the September 17 hearing, the juvenile court noted SSA had filed an ex parte request to dismiss the petition establishing emergency jurisdiction. Minors' counsel

asserted DCFS had not filed a petition and had placed the younger children with father, and J.K. with the maternal grandmother.

Father's counsel objected to minors' counsel's assertions as hearsay, noting SSA's reports did not contain the asserted information. Counsel noted the children had been taken to the airport by SSA's social worker and released to a representative from DCFS, and "we do not know what Utah did" and there was "no evidence that they disregarded everything that California did."

The court dismissed the petition, terminated jurisdiction, and vacated future court dates. A minute order reflects "actions taken by Utah are not known to this court." Mother filed a notice of appeal, specifically asserting the juvenile court erred by failing to give mother time to seek a custody order in Utah (§ 3424, subd. (c)) and ordering the petition dismissed.

II

DISCUSSION

Juvenile Court Did Not Err in Terminating Temporary Emergency Jurisdiction

Mother contends the juvenile court erred by not continuing emergency jurisdiction under the UCCJEA so she could challenge the custody orders in Utah before the court released the children to Utah's DCFS. She asserts it was reasonable to believe Utah did not intend to exercise dependency jurisdiction and instead planned to release the children to father.

A California court generally has jurisdiction to make a child custody determination only if it is the home state of the child on the date a proceeding commenced to determine legal custody, physical custody, or child visitation. (§ 3421.) These proceedings involve "dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear." (§ 3402, subd. (d).) A "Child custody determination" is defined as a court order concerning legal custody,

physical custody, or child visitation, and includes a permanent, temporary, initial, and modification order. (§ 3402, subd. (c).) The “[h]ome state” of a child “means 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.” (§ 3402, subd. (g).) Section 3423 generally provides, “a court of this state may not modify a child custody determination made by a court of another state”

As explained in *In re C.T.* (2002) 100 Cal.App.4th 101 (*C.T.*), the UCCJEA and its predecessor legislation (former Civ. Code, § 5150 et seq. [Uniform Act or UCCJA]) was enacted out of concern over parents engaging in forum shopping to gain favorable custody decisions. “Its purpose was to ‘[avoid] jurisdictional competition and conflict, [promote] interstate cooperation, [litigate] custody where child and family have closest connections, [discourage] continuing conflict over custody, [deter] abductions and unilateral removals of children, [avoid] relitigation of another state’s custody decisions, and [promote] exchange of information and other mutual assistance between courts of sister states.’” (*Id.* at p. 106; *Kumar v. Superior Court* (1982) 32 Cal.3d 689, 695.) “The [UCCJEA] is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions and governs juvenile dependency proceedings.” (*C.T.*, *supra*, at p. 106.)

We employ the deferential substantial evidence standard in reviewing the juvenile court’s jurisdictional rulings under the UCCJEA if the court based its findings on the resolution of factual disputes. (*Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1286.) The lower court’s resolution of conflicts in the evidence and credibility assessments are binding on this court. (*Id.* at p. 1287.)

Here, the parties agree Utah was the children’s home state and the juvenile court appropriately invoked emergency jurisdiction. Mother does not dispute that Utah entered a previous child custody order and that it was entitled to enforcement under the UCCJEA. As noted, on July 22 the Utah family court issued an order against mother

placing temporary sole legal and physical custody with father, and placing J.K. with the maternal grandmother pending the outcome of the sexual abuse investigation. Mother does not dispute the juvenile court contacted Utah as required under the UCCJEA and Utah did not concede jurisdiction to California.

But mother, relying on *In re Joseph D.* (1993) 19 Cal.App.4th 678, asserts the juvenile court erred in terminating emergency jurisdiction without first ensuring mother had the opportunity to present her allegations and contest custody in Utah. In *Joseph D.*, the appellate court held that a juvenile court exercising emergency jurisdiction under UCCJEA's predecessor statute must defer to the jurisdiction of the child's home state if that state asserts its primary jurisdiction. (*Id.* at pp. 693-694.) The juvenile court, however, could determine the child's best interests required the court to exercise its equitable powers and allow the child to remain temporarily in mother's custody "for a period of time no longer than reasonably necessary" to allow mother to present her allegations of abuse to the court having jurisdiction. (*Id.* at p. 694.) Here, mother complains the juvenile court failed to invoke its equitable powers in the children's best interests when it declined to continue temporary custody and allow mother an opportunity to present her allegations to the Utah court.

We do not find mother's contention persuasive. The juvenile court exercised emergency jurisdiction to detain temporarily the children based on the allegations of the petition and SSA's investigation and reports. (*C.T., supra*, 100 Cal.App.4th at p. 108 [court has jurisdiction to detain a child pending an evidentiary hearing based on allegations showing an emergency].) The court did not conduct an evidentiary hearing or make any findings concerning the truth of the allegations against father. The juvenile court, in consultation with SSA and after speaking to judicial officers at both the Utah family and juvenile courts, elected to transfer the children from the protective custody of SSA to the protective custody of DCFS. The court received assurances Utah courts would consider additional information developed in California

and the children would be protected. Utah, as the children's home state, had primary jurisdiction and its courts were ultimately responsible for the safety and well-being of its children. We may not assume Utah did not fulfill its *parens patriae* duty to protect its resident children.

Although section 3424, subdivision (c), arguably authorized the juvenile court to issue a protective order of limited duration pending mother's application to a Utah court to obtain or modify a custody order, nothing in section 3424, or in *Joseph D.*, mandated a continuance where the court elected instead to place the children in the protective custody of the home state's child protection authorities. (*C.T.*, *supra*, 100 Cal.App.4th at p. 113 [California's emergency jurisdiction generally ends with the transfer of the matter to the sister-state court].) Under these circumstance, the juvenile court did not err in terminating emergency jurisdiction, even assuming Utah authorities might conclude, based on its prior investigation and notwithstanding the information developed in California, that there was no basis to file a dependency action. The juvenile court was not required to ascertain whether DCFS "seriously reconsidered" the additional evidence California uncovered before it terminated emergency jurisdiction.

Mother's incarceration in Orange County is an additional basis supporting the juvenile court's termination of emergency jurisdiction. Mother requested a 60-day continuance of emergency jurisdiction to "file for custody of the children in Utah," but nothing in the record suggested mother would resolve her criminal charges within 60 days and gain her release from custody. In any event, nothing precluded mother or the children from presenting any new information to the Utah courts immediately upon the children's return, through counsel or otherwise.

Mother faults the juvenile court for failing to obtain "recognition by the Utah court that any of the children's allegations could be believed," or at least "to ensure that the children's allegations would be heard."

In support, mother relies on *C.T.* There, an Arkansas court granted father primary physical custody of his daughter. When the daughter visited mother's California residence she disclosed she had been sexually abused while in father's custody. At a jurisdictional hearing a California court found true the allegations in a dependency petition based on the daughter's accusations. The Arkansas court asserted its jurisdiction to decide the custody issue, but agreed to follow the California court's custody order placing the child with the mother pending further proceedings in Arkansas. The appellate court reversed the jurisdictional findings because whether an emergency exists under section 3424 is a separate and distinct procedure from a jurisdictional hearing on a dependency petition. (*C.T.*, *supra*, 100 Cal.App.4th at p. 109.) The appellate court, however, affirmed the juvenile court's termination of jurisdiction because Arkansas asserted its jurisdiction to determine the custody issue while the mother retained custody of the child. (*Id.* at p. 113.)

Mother's reliance on *C.T.* is misplaced. *C.T.* recognized that Arkansas agreed to abide by California's temporary custody determination, but *C.T.* did not require juvenile courts to extract promises from courts with primary jurisdiction that they will abide by the result of California's emergency investigation and orders. Unlike *C.T.* and *Joseph D.*, mother here was not a California resident. And, as respondent points out, the juvenile court protected the children by placing them in the protective care of DCFS, the home state agency charged with protecting children and instituting dependency proceedings. The court released the children to DCFS because DCFS could not file a dependency petition until taking the children into protective custody. Mother suspected she would not prevail in Utah, but this is hardly a basis for the juvenile court to retain emergency jurisdiction and keep the children in California. Under these circumstances, the juvenile court acted appropriately under the UCCJEA.

Finally, mother's due process argument also fails. She failed to raise this claim in the juvenile court and therefore forfeited the issue. In any event, Mother's due

process claim lacks merit. Mother and the children were represented in juvenile court by separate counsel, and had an opportunity to be heard in California before the juvenile court's termination of emergency jurisdiction. The juvenile court protected the well-being of the children by releasing them to DCFS, not to the custody of either parent. Nothing suggests Utah courts would fail to protect the children from harm.¹

III

DISPOSITION

The orders are affirmed.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.

¹ SSA has filed an unopposed request for judicial notice of Utah juvenile court records purporting to show how Utah resolved the custody issues in this case. Because we have concluded the juvenile court did not err in terminating jurisdiction and returning the children to DCFS, we deny the request as irrelevant. Subsequent events in Utah occurring after the juvenile court's rulings shed no light on whether the court erred.