IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

EILEEN C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.C., *Appellees*.

No. 1 CA-JV 21-0128
FILED 9-30-2021

Appeal from the Superior Court in Maricopa County
No. JD531853
The Honorable David K. Udall, Judge

SPECIAL ACTION JURISDICTION ACCEPTED; RELIEF DENIED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Jennifer R. Blum
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Maurice Portley[1] delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Samuel A. Thumma joined.

P O R T L E Y, Judge:

¶1 Eileen C. ("Mother") appeals the superior court's denial of her request to dismiss a dependency. We lack appellate jurisdiction but assume special-action jurisdiction allowing us to review the superior court's subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Because the superior court had jurisdiction, we accept jurisdiction but deny relief.

FACTS AND PROCEDURAL HISTORY

¶2 Mother has two children, Bart,[2] born in 2004, and Wayne, who turned eighteen before Mother filed this appeal. The children's father is deceased. In March 2018, Mother signed a notarized affidavit of intent to homeschool the children, listing a Yuma, Arizona address for her residence. The following month, she filed a similar notice in Nevada, listing addresses there and in Lake Havasu, Arizona.

¶3 In June 2018, the Department of Child Safety ("DCS") received a report that Mother was hospitalized in Mohave County with paranoia and hallucinations. Mother told staff she was running from protective services agencies in Texas, Nevada, California, and Utah. DCS investigated and confirmed that Mother had been the subject of previous reports to child protective agencies in New Mexico (2014) and California (2015). During its investigation, DCS also discovered that her two children were developmentally delayed and had not attended school in a formal

[1] The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

[2] To help protect the identity of the children involved in this case, we refer to them with pseudonyms. *See State v. Agueda*, 250 Ariz. 504, 506, ¶ 2 n.2 (App. 2021).

setting for more than ten years. Additionally, Mother was unemployed and did not have stable housing.

¶4 Mother told the DCS investigator that the family was "just passing through" Mohave County on their way from Las Vegas to Mesa, Arizona, where she hoped to find a job and housing and "stay awhile." Mother refused to provide DCS with the names of any relatives who could care for the children; she claimed her relatives were abusive. Based on this information, DCS took custody of the children and filed a dependency petition alleging that Mother was unable to provide proper and effective parental care and control because she was not treating her mental health or providing for the children's basic needs.

¶5 At Mother's preliminary protective hearing, the superior court stated it did not "know where the children resided for the last six to eight months." The court then found that it had temporary emergency jurisdiction under the UCCJEA and continued the hearing to allow counsel to be appointed for Mother.

¶6 One week later, at the continued hearing, the court asked the parties for information about where the family lived before DCS took custody of the children. Neither counsel offered additional information, and Mother told the court that she did not "have a permanent residence at this particular time." At the conclusion of the hearing, Judge Derek Carlisle then signed an order assuming temporary emergency jurisdiction for purposes of the dependency.

¶7 At Mother's "initial appearance" one week later, her counsel advised the court that the children had no identifiable home state under the UCCJEA, *see* Ariz. Rev. Stat. ("A.R.S.") § 25-1002(7)(a) (defining the term "home state" for purposes of the UCCJEA), and urged the court to exercise jurisdiction. All parties agreed, however, that Arizona was the most appropriate forum and that the court should exercise jurisdiction. The court found the children did not have a home state and Arizona was the most appropriate forum; it therefore "affirm[ed] its finding that Arizona has [j]urisdiction."[3] The court also granted Mother's motion for a change of venue to Maricopa County.

[3] These findings are contained in the unsigned minute entry documenting the hearing; the record on appeal contains no corresponding signed order.

¶8 In January 2019, though represented by counsel, Mother filed a hand-written "request to the court" seeking new counsel and other requests, but she also wanted housing because before the dependency she had been displaced by a landlord in Yuma "who could not afford to tent home for fleas in the height of summer." The next month, the superior court found the children dependent and adopted a case plan of family reunification. No appeal was filed. Ten months later, Mother wrote another letter to the court that suggested the case began when the family was "in transit [from California] to the State of Texas."

¶9 In June 2020, Mother informed the court she had moved to Texas and secured a home there. The next month, the court changed the children's case plan to independent living. In an order filed January 13, 2021, the court granted Mother's request for her attorney to withdraw and Mother to represent herself.

¶10 Later that month, Mother, now representing herself, asked the court to vacate the dependency finding, return the children to her, and dismiss the case. The court then re-appointed Mother counsel. At a subsequent report and review hearing, the court dismissed the case as to Wayne effective the date of his upcoming eighteenth birthday. The court also granted Mother's latest request to represent herself. The court subsequently denied Mother's motion to vacate the dependency and dismiss the case. Mother re-urged her motion, which the court summarily denied. Mother timely filed a notice of appeal from the order denying her motion to dismiss.

ANALYSIS

¶11 Mother argues (1) the superior court erred by finding it had jurisdiction under the UCCJEA without first holding an evidentiary hearing; (2) changing the case plan to independent living violated due process because it effectively terminated her parental rights; and (3) there was no requirement for her home to be approved through the Interstate Compact for the Placement of Children before the court could return Bart to her custody.

¶12 At the outset, however, we must address DCS's argument that we lack jurisdiction over Mother's appeal. We have an independent duty to examine our jurisdiction, and if jurisdiction is lacking, to dismiss the appeal. *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304 (App. 1991). An aggrieved party "may appeal from a final order of the juvenile court." A.R.S. § 8-235(A). An order is final if it "disposes of an issue such that it

conclusively defines the rights and/or duties of a party in a dependency proceeding." *Yavapai Cnty. Juv. Action No. J-8545*, 140 Ariz. 10, 15 (1984).

¶13 Here, Mother's notice of appeal states she is appealing only the order "filed on 3/25/2021, denying Mother's 2nd Motion to Dismiss." In juvenile court matters, as in other cases, orders denying motions to dismiss typically are interlocutory and therefore not appealable. *See Maricopa Cnty. Juv. Action No. JD-05401*, 173 Ariz. 634, 638 (App. 1993). Even if we construe Mother's motion as a request to return Bart to her custody under Arizona Rule of Procedure for the Juvenile Court 59, the March 2021 order would not be appealable. *Brionna J. v. Dep't of Child Safety*, 247 Ariz. 346, 350, ¶ 10 (App. 2019) ("[A]n order denying a Rule 59 motion is interlocutory, and therefore not a final and appealable order." (citation omitted)). Even if it were a final order, however, Mother did not timely appeal it. *See* Ariz. R.P. Juv. Ct. 104(A) (requiring that a notice of appeal be filed within fifteen days after the final order is filed with the clerk of the court).

¶14 Likewise, we do not have appellate jurisdiction over Mother's challenge to the superior court's subject-matter jurisdiction under the UCCJEA. Although issues of subject-matter jurisdiction may be raised at any time, including during an appeal, *Secure Ventures, LLC v. Gerlach*, 249 Ariz. 97, 101, ¶ 11 n.3 (App. 2020), an arguable question about jurisdiction does not, by itself, render a non-appealable order appealable, *see James v. State*, 215 Ariz. 182, 191, ¶ 35 (App. 2007) ("Absent jurisdiction, we do not address [the appellant's] arguments . . . ."); *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 347, ¶ 7 (App. 2007). Accordingly, we lack appellate jurisdiction over Mother's appeal.

¶15 Nonetheless, "'in light of the fundamental right at stake' in dependency proceedings," we accept Mother's request to assume special-action jurisdiction and reach the merits of her argument under the UCCJEA. *See Brionna J.*, 247 Ariz. at 350, ¶ 14 (quoting *J-8545*, 140 Ariz. at 14). We review the superior court's subject-matter jurisdiction to hear a case *de novo*. *See Angel B. v. Vanessa J.*, 234 Ariz. 69, 71, ¶ 6 (App. 2014) (considering a court's jurisdiction to sever parental rights). However, we defer to the juvenile court's findings of fact and will not disturb those findings if reasonable evidence supports them. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93-94, ¶ 4 (App. 2009). It is uniquely the juvenile court's province to resolve conflicts in the evidence and to assess witness credibility. *In re David H.*, 192 Ariz. 459, 461, ¶ 8 (App. 1998). Additionally, we review a decision about whether to hold an evidentiary hearing for an abuse of discretion. *Duckstein v. Wolf*, 230 Ariz. 227, 233-34, ¶ 19 (App. 2012).

¶16 The UCCJEA "is designed to prevent competing and conflicting custody orders by courts in different jurisdictions." *Angel B.*, 234 Ariz. at 72, ¶ 8 (citation omitted). When such conflicting orders exist, the UCCJEA designates jurisdiction over child custody proceedings to a child's "home state," meaning "[t]he 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." A.R.S. § 25-1002(7)(a). Even when Arizona is not a child's home state, under the UCCJEA, an Arizona court may exercise temporary emergency jurisdiction in a dependency proceeding if the child is in Arizona and "has been abandoned or it is necessary in an emergency to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse." A.R.S. § 25-1034(A). Moreover, for Title 8 juvenile court proceedings (like this one), jurisdiction over a child generally is based on physical presence in Arizona. *See* A.R.S. § 8-532.

¶17 Here, Mother does not directly challenge the superior court's exercise of temporary emergency jurisdiction, but she suggests the court "never [gave] a fair exploration of Arizona's jurisdiction in this matter." She asserts that Arizona is not Bart's home state, "the record is silent about whether any other state has ever made any custody determinations," and she "was literally doing nothing more than passing through Arizona" when the dependency began. She argues that an evidentiary hearing was warranted because she has a "colorable claim that Arizona does not, or should not, have jurisdiction over this matter."

¶18 Although Mother argues Arizona was not Bart's home state at the time the court ruled, there is no question that Bart was physically present here at that time. *See* A.R.S. § 8-532. Moreover, the UCCJEA allows a court to exercise temporary emergency jurisdiction when it is not the child's home state. *See Sha'quia G. v. Dep't of Child Safety*, 251 Ariz. 212, 215, ¶ 13 (App. 2021) (concluding that California's role as the children's home state did not prevent the superior court from exercising temporary emergency jurisdiction in Arizona); *Arturo D. v. Dep't of Child Safety*, 249 Ariz. 20, 24, ¶ 13 (App. 2020) (same); *Welch-Doden v. Roberts*, 202 Ariz. 201, 210, ¶ 40 (App. 2002) (stating that "home state jurisdiction is controlling (apart from emergencies under § 25-1034)"). Mother contends she was just "passing through" Arizona at the time, but (1) that would not be dispositive under Title 8 and (2) temporary emergency jurisdiction under the UCCJEA does not require residence or even a long-term stay in the state; when the other statutory prerequisites are met, it may exist when "the child is present in this state." A.R.S. § 25-1034(A).

¶19 The UCCJEA further provides that a court's exercise of temporary emergency jurisdiction may continue "[i]f there is no previous child custody determination that is entitled to be enforced . . . and a child custody proceeding has not been commenced in a court of a state having jurisdiction." A.R.S. § 25-1034(B). Nothing before the superior court suggested that another child custody determination involving Bart was pending in any other state. Although Mother argues the court erred by ruling without an evidentiary hearing, she points to no evidence or offers of proof in the record that would have precluded the court's exercise of temporary emergency jurisdiction.

¶20 As for other statutory prerequisites for temporary emergency jurisdiction, the evidence before the court in July 2018 showed that Mother was unable to meet Bart's needs because she had been admitted to the hospital for hallucinations and paranoia, lacked stable housing, was unemployed**,** and left Bart without an adult to care for him. Considering the facts, the superior court properly exercised temporary emergency jurisdiction in July 2018 under the UCCJEA to protect Bart from neglect or abuse. *See* A.R.S. § 25-1034(A).

¶21 At Mother's initial appearance, in July 2018, the superior court "affirm[ed] its finding that Arizona has [j]urisdiction in this case." Even though the court's minute entry is unsigned and does not specify the exact basis on which the court found that jurisdiction in Arizona was proper, because Mother did not provide this court with the transcript from that hearing, we assume it supports the superior court's finding of temporary emergency jurisdiction under the UCCJEA. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16 (App. 2003) ("An appellant is responsible for making certain that the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal. . . . When a party fails to do so, we assume the missing portions of the record would support the trial court's findings and conclusions." (citations omitted)).

¶22 Nevertheless, Mother argues that the superior court erred by not holding an evidentiary hearing to determine its jurisdiction under the UCCJEA. Mother, however, cites no controlling authority requiring the superior court to hold an evidentiary hearing before taking temporary emergency jurisdiction under the UCCJEA. Additionally, there is no indication that she requested an evidentiary hearing at any time during the proceedings. Instead, at Mother's initial appearance, her attorney confirmed that Bart had no home state and urged the superior court to take jurisdiction. On this record, the superior court did not err when it decided

to assume temporary emergency jurisdiction in July 2018 without holding an evidentiary hearing.

CONCLUSION

¶23 For the foregoing reasons, we accept special action jurisdiction over the UCCJEA issue, but deny Mother's request to remand for an evidentiary hearing under the UCCJEA. We also decline to accept special action jurisdiction over Mother's remaining challenges.

AMY M. WOOD • Clerk of the Court
FILED: AA