IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ARTURO D.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND A.D.,
Appellees.

No. 2 CA-JV 2019-0157
File April 30, 2020

Appeal from the Superior Court in Pima County
No. JD20190385
The Honorable Laurie B. San Angelo, Judge Pro Tempore

AFFIRMED

COUNSEL

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Arturo D. appeals from the juvenile court's order adjudicating his son, A.D., born in January 2017, a dependent child.[1] Arturo argues the court erroneously applied the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA), A.R.S. §§ 25-1001 to 25-1067, in determining it had temporary emergency jurisdiction to find A.D. dependent under § 25-1034. We affirm.

Factual and Procedural Background

¶2 In July 2019, the Department of Child Safety (DCS) received a report that then-two-year-old A.D. was "w[a]ndering [in] a parking lot [in Tucson] with no shoes [and] unsupervised." He was seen "running in and out of traffic," had almost been hit by a car, and had blisters "all over his feet." After his mother, T.D., was located, she indicated she had been using the restroom at a Denny's restaurant but could not explain why A.D. was in the parking lot. She reportedly was driving a vehicle that was not in a "condition to drive" and had false license plates; she did not have a car seat for A.D.; at least one other minor child was also with her; she provided various explanations for the family's presence in Arizona; she did not have money for gas or food; and, police found two pipes in her vehicle, one appearing to contain marijuana residue and the other an unknown residue. T.D. was arrested for three counts of contributing to the delinquency of a minor, and DCS took custody of the children[2] because she was unable to identify a suitable adult to care for them. Arturo and T.D. were married to each other at the time of the incident and had been living in California for

[1]A.D. was also adjudicated dependent as to his mother, who is not a party to this appeal.

[2]The family, which includes two additional children from different fathers, has a history of child-welfare reports in California dating back to 2006. The other children are not involved in this proceeding.

several years. Arturo was incarcerated in California when the incident occurred and was due to be released in April 2020.

¶3 The following day, DCS met with T.D., who "presented as very agitated" and was not cooperative, began yelling and "stormed out" of the DCS office without leaving any contact information. On July 17, three days after the initial incident, DCS filed a petition alleging A.D. was dependent as to the parents, and alleging abuse and neglect as to Arturo based on his failure to arrange for A.D.'s "safe care and protection while he [was] incarcerated."

¶4 The issue of jurisdiction under the UCCJEA was raised at the preliminary protective hearing held on July 19, 2019. Counsel for DCS reported that although the family had a history with child-protective authorities in California, he did not believe there was an open case or any custody orders in that state. He also reported that although DCS had attempted to assess family members with whom to place the children in California, it had been unable to do so because T.D. had failed to cooperate. Counsel stated, "for the time being at least, we're stuck here [in Arizona] until California agrees to take jurisdiction back, if they do." At a September 2019 status hearing, Arturo asserted this is a "home state issue[]," noting that although the family was "passing through Arizona," they reside in California. Counsel for DCS reiterated that it was unaware of an existing case for the family in California and asked the juvenile court to continue its temporary emergency jurisdiction.

¶5 A few weeks later, the juvenile court declined DCS's request to set a UCCJEA conference with the court in California, noting there was no reference to a case in that state. The court instead directed DCS to coordinate with California child welfare authorities, or to provide information about filing a case there or about an existing case so that a UCCJEA conference could be arranged. In October 2019, approximately three weeks after his release from prison, Arturo filed a "Continuing Objection to Jurisdiction," reasserting that Arizona did not have jurisdiction because California was the home state under the UCCJEA. Contending that an emergency no longer existed to warrant temporary emergency jurisdiction, Arturo asked that the matter be dismissed or that the court "immediately communicate with the appropriate court in . . . California to determine how to resolve this matter."

¶6 At an October 30, 2019 dependency review hearing, DCS reported that its counterpart in California had indicated "in no uncertain

terms" that they would not be filing a dependency action there.[3] The juvenile court noted that DCS had "attempted to coordinate with the State of California, which appears to be the home state of the children for the filing of a child welfare action in that state, and [the] State of California declined to do so."[4]

¶7 At the contested dependency adjudication hearing held on October 31, 2019, the juvenile court found, over Arturo's objection, that temporary emergency jurisdiction continued to exist. The court also noted, "there has been no evidence that the State of California has taken action to file a case involving the children that would allow this Court to confer with a Court of similar jurisdiction," and without a case in California "to which this Court could confer and determine which court is the more appropriate forum, this Court has complied with the provisions of the [UCCJEA]."

¶8 At the adjudication hearing, Arturo testified he was currently living at a "sober living home" in California, he had seven prior convictions for selling methamphetamine, he had been employed for one week at the time of the hearing,[5] he had most recently been incarcerated for violating his probation by testing positive for methamphetamine, and he had struggled with methamphetamine addiction for most of his life. He also testified he had "lost everything" upon his most recent incarceration. Although Arturo stated he had not spoken with the owner of the halfway house where he was currently living, he was "pretty sure" the owner "might" let A.D. live with him at the facility; he also stated he "believe[d]" he could move to a shelter that accepts children. However, when counsel for DCS asked him how much time he would need before he would be "ready to have [A.D.] back with [him]," Arturo explained he would need "a couple of months" to "get a place to live and stuff like that." At the conclusion of the hearing, the juvenile court made extensive factual findings, which it summarized in its written minute entry ruling, and after concluding that Arturo "did not testify to a clear and cogent ability to provide the basic necessities for [A.D.] at th[at] time," it adjudicated A.D.

[3] At that same hearing, the juvenile court adjudicated A.D. dependent as to T.D. in her absence.

[4] DCS does not appear to disagree that California is the home state.

[5] The juvenile court apparently was mistaken when it stated that Arturo "is currently unemployed."

dependent based on neglect. Arturo timely appealed to this court, and we have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1).

Emergency Jurisdiction Under the UCCJEA

¶9 On appeal, Arturo argues the juvenile court erroneously applied the UCCJEA in finding it had temporary emergency jurisdiction under § 25-1034 to find a dependency, and asks us to reverse that finding and the dependency adjudication.[6] Because the primary consideration in a dependency case is the best interests of the child, the juvenile court is vested with broad discretion. *See Ariz. Dep't of Econ. Sec. v. Superior Court* (*Baby Boy T*), 178 Ariz. 236, 239 (App. 1994). However, "[w]e review issues of law, including statutory interpretation and a court's jurisdictional authority, de novo," and, "[t]o the extent a court's jurisdictional determination rests on disputed facts . . . we accept the court's findings if reasonable evidence and inferences support them." *Holly C. v. Tohono O'odham Nation*, 247 Ariz. 495, ¶ 26 (App. 2019).

¶10 The UCCJEA is "designed to prevent competing and conflicting custody orders by courts in different jurisdictions." *Angel B. v. Vanessa J.*, 234 Ariz. 69, ¶ 8 (App. 2014). It grants jurisdiction over child custody proceedings[7] to the child's "home state," defined as "[t]he state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state." A.R.S. § 25-1002(7)(a). However, an Arizona court may exercise temporary emergency jurisdiction 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); *Melgar v. Campo*, 215 Ariz. 605, ¶ 12 (App. 2007); *see Welch-Doden v. Roberts*, 202 Ariz. 201, ¶ 40 (App. 2002) (under UCCJEA

[6] To the extent Arturo maintains the juvenile court found a dependency "without giving regard to" the question of jurisdiction in Arizona, the record belies his claim.

[7] The UCCJEA defines "'[c]hild custody proceeding'" to include a proceeding for dependency. A.R.S. § 25-1002(4)(a). We further note this court has acknowledged the application of the UCCJEA in such cases. *See Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 11 (App. 2005). And, although A.R.S. § 8-202(B), provides that the "juvenile court has exclusive original jurisdiction over all proceedings" involving juveniles, this does not alter Arizona's adherence to the UCCJEA, which it also has adopted.

home state jurisdiction is controlling apart from emergencies under § 25-1034).

¶11 Section 25-1034(B) provides:

> If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under § 25-1031, 25-1032 or 25-1033, 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 § 25-1031, 25-1032 or 25-1033. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under § 25-1031, 25-1032 or 25-1033, 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.

¶12 As previously noted, dependency proceedings are considered child custody proceedings under the UCCJEA. A.R.S. § 25-1002(4)(a). Thus, we find misplaced Arturo's arguments that the juvenile court erred because no "custody order" existed in California and one was not necessary because he is A.D.'s biological parent, and because California did not decline jurisdiction, but instead declined to open a case.[8] Although a primary purpose of the UCCJEA is to prevent conflicting and competing custody orders in different jurisdictions, *Angel B.*, 234 Ariz. 69, ¶ 8, the existence of a previous custody order is not necessary for a court to exercise temporary emergency jurisdiction. *See* A.R.S. § 25-1034(B); *cf.* § 25-1034(C) (when custody order that is entitled to be enforced exists or has been commenced, order taking temporary emergency jurisdiction must specify period to seek order from previous court, and emergency order is effective

[8]In his reply brief, Arturo further asserts that DCS "assumes" that California will not open a case if A.D. is "returned" to that state. But his suggestion that the juvenile court should simply "return" A.D. to California would potentially place A.D. at risk of harm in light of the evidence presented and in the absence of an identified, appropriate home for him there, along with California's unwillingness to open a case to date.

until order is obtained from previous court or until period expires), (D) (when custody order that is entitled to be enforced exists or has been commenced, court taking temporary emergency jurisdiction must immediately communicate with previous court, and on being informed of temporary emergency jurisdiction, previous court shall immediately communicate with court taking jurisdiction). Nor do we find persuasive Arturo's assertion that, for purposes of our analysis here, there is a meaningful distinction between California's having declined to open a case versus declining jurisdiction.

¶13 Arturo also argues that, because California is A.D.'s home state pursuant to § 25-1031(A)(1), the statute that governs initial jurisdiction in child custody matters, and because California has not declined jurisdiction on the ground that Arizona is a more appropriate forum pursuant to § 25-1031(A)(3), Arizona lacks emergency jurisdiction. Again, we note that the UCCJEA was implicated here to protect A.D. from risk of harm, as contemplated by §§ 25-1031(A) and 25-1034, and according to the provisions of those statutes, California's role as the home state does not prevent temporary emergency jurisdiction.

¶14 Additionally, to the extent Arturo asserts that Arizona is an inconvenient forum under § 25-1037(B), and that maintaining a dependency adjudication in Arizona will lead to jurisdiction competition with California and is contrary to A.D.'s best interests, we reject that argument. Notably, the case Arturo cites for that proposition also qualifies and distinguishes home state jurisdiction "from emergencies under § 25-1034." *Welch-Doden*, 202 Ariz. 201, ¶ 40. And, although we review the juvenile court's ruling on the issue of forum non conveniens for an abuse of discretion, *see Coonley & Coonley v. Turck*, 173 Ariz. 527, 531 (App. 1993), once the court established temporary emergency jurisdiction here, it follows that it deemed Arizona the most convenient forum in which to proceed. In addition, Arturo has not persuaded us how the court's having intervened to ensure A.D.'s safety was contrary to his best interests. We note, moreover, nothing in the record indicates the court or DCS intends to make Arizona the home state.[9]

[9] At the disposition hearing, which immediately followed the juvenile court's dependency adjudication ruling, DCS confirmed that the case plan included transitioning the children back to California. In addition, the court noted it had "considered the health and safety of the

¶15 Finally, Arturo argues there was "no evidence" to support the juvenile court's dependency adjudication as to him based on neglect, instead asserting that A.D. was neglected only while he was in T.D.'s care, and that any safety risk supporting temporary emergency jurisdiction no longer existed at the time of the adjudication hearing.[10] He points out that in addition to participating in services, he is employed and can provide financially for A.D.

¶16 A dependent child includes one "[i]n need of proper and effective parental care and control . . . who has no parent . . . willing to exercise or capable of exercising such care and control," or one whose "home is unfit by reason of abuse, neglect, cruelty or depravity by a parent." A.R.S. § 8-201(15)(a)(i), (iii). Neglect includes "[t]he inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a). The allegations in a dependency petition must be proven only by a preponderance of the evidence, A.R.S. § 8-844(C), and, because the primary concern in a dependency proceeding is the best interests of the child, "the juvenile court is vested with a great deal of discretion." *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005) (quoting *Baby Boy T*, 178 Ariz. at 239). We defer to the juvenile court's ability to weigh and analyze the evidence. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 13 (App. 2016), and we will disturb a dependency adjudication only if no reasonable evidence supports it. *Id*.

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children as a paramount concern" when it adjudicated A.D. dependent, and found the case plan goal of family reunification appropriate.

[10]Arturo cites multiple cases to support his argument that temporary emergency jurisdiction is not intended to last indefinitely and that the juvenile court erred by finding that any emergency that existed in July still existed at the October hearing. As DCS correctly points out, unlike here, all but one of the cited cases (which was otherwise distinguishable) involved matters where there was a custody order in another state before the current state took temporary emergency jurisdiction. In contrast, based on the express provisions in § 25-1034(B), and the facts in this case, including that California declined to open a case for the family, there was reasonable evidence to support a finding of continuing temporary emergency jurisdiction in Arizona at the time of the hearing.

¶17 Notably, Arturo has ignored the juvenile court's factual findings, which the court made only after considering all of the evidence, "including the testimony of the witnesses and their credibility and demeanor while testifying, the legal file, and the exhibits," and after "assign[ing the] weight deemed appropriate to the evidence." That evidence included Arturo's testimony that he had been addicted to methamphetamine for most of his life; he had seven prior felony convictions related to the sale of drugs; his most recent incarceration arose from a "dirty test"; he will "probably go back to jail" if he violates his probation, which lasts until 2022; he was not aware T.D. had been using drugs or that A.D. had been born substance exposed; at the time of the hearing, he had been employed for one week and had been out of jail for approximately one month; he was not sure A.D. could live with him in the halfway house where he had planned on staying for three additional months; and, he needed a "couple of months" before he would be ready to care for A.D.

¶18 Arturo has not established that the juvenile court's findings are incorrect or explained how they fail to support the court's determination that A.D. is dependent. *See* A.R.S. § 8-201(15)(a)(i), (iii), (25)(a). Despite his claim to the contrary, Arturo essentially asks that we reweigh the evidence. It is not, however, within our purview to do so. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002) ("The resolution of . . . conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review.").

Disposition

¶19 Based on the record before us, the juvenile court did not err in exercising temporary emergency jurisdiction. Accordingly, the court's order adjudicating A.D. dependent as to Arturo is affirmed.