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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KATELYNN C., *Appellant,*

v.

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

No. 1 CA-JV 16-0183
FILED 10-25-2016

Appeal from the Superior Court in Maricopa County
No. JD529096
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

David W. Bell, Mesa
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Laura J. Huff
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Patricia K. Norris and Judge Margaret H. Downie joined.

T H U M M A, Judge:

¶1 Katelynn C. (Mother) appeals the superior court’s order finding her child (M.C.) dependent, arguing the court lacked jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Because the court properly had jurisdiction, the dependency finding is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Zachary C. (Father) are the biological parents of M.C., born in 2015.¹ At all relevant times, Mother and Father were residents of Utah, where M.C. lived with Mother from birth until four months of age. During that time, Father was incarcerated in Utah, including for domestic violence charges. When M.C. was four months old, Mother attempted suicide. Within days, Mother signed a limited power of attorney and asked her father (Grandfather) to take and care for M.C. in Arizona. When family friends arrived in Utah to pick up M.C., he was filthy, and the home was an apparent “drug house” and filthy.

¶3 After Grandfather had been caring for M.C. in Arizona for one month, Mother sought to revoke the power of attorney and have M.C. returned to her in Utah. Fearing for M.C.’s safety, Grandfather filed a guardianship petition in Utah and a dependency petition in Arizona. As relevant here, the Arizona dependency petition alleged Mother (1) was mentally unstable and unable to care for an infant, had attempted suicide and repeatedly threatened to kill herself; and (2) engaged in domestic violence with Father in M.C.’s presence. The Department of Child Safety (DCS) investigated, substituted in as petitioner and placed M.C. in Grandfather’s custody.

¹ M.C. was found dependent as to Father as well, but Father is not a party to this appeal.

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¶4 At the initial dependency hearing, Mother appeared and contested the allegations and the parties discussed the Utah petition and jurisdiction under the UCCJEA. The Arizona superior court then conferred with the Utah court as contemplated by the UCCJEA and, after that conference, determined Arizona had jurisdiction. At about this same time, the Arizona superior court learned that the Utah court had dismissed the guardianship petition Grandfather filed there. Several months later, Mother moved to dismiss, arguing under the UCCJEA, jurisdiction was in Utah, not Arizona. The superior court denied Mother’s motion. After a dependency adjudication hearing where Mother and a DCS specialist testified, the court found M.C. dependent and ruled that it had “subject matter jurisdiction as Mother left [M.C.] with [Grandfather] and the situation required him to come forward with a private dependency petition [as] Mother was expressing suicidal ideations and Father was incarcerated for domestic violence.” The court adopted a case plan of family reunification with a concurrent plan of severance and adoption.

¶5 This court has jurisdiction over Mother’s timely appeal from the dependency finding pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235, 12-120.21(A)(1) and -2101(A)(1) (2016)² and Arizona Rules of Procedure for the Juvenile Court 103-04.

DISCUSSION

¶6 Whether the superior court has jurisdiction to adjudicate a child dependent is a question of law this court reviews de novo. *Angel B. v. Vanessa J.*, 234 Ariz. 69, 71 ¶ 6 (App. 2014) (citing *Danielson v. Evans*, 201 Ariz. 401, 411 ¶ 36 (App. 2001); *David S. v. Audilio S.*, 201 Ariz. 134, 136 ¶ 4 (App. 2001)). Because a court’s ruling on emergency jurisdiction is fact-intensive, this court reviews that aspect of such a ruling for an abuse of discretion. See *Arizona Dept. of Econ. Sec. v. Superior Court In & For County of Maricopa*, 178 Ariz. 236, 239 (App. 1994).

¶7 In Arizona, the UCCJEA is codified at A.R.S. § 25-1001, et. seq. The UCCJEA is designed to avoid jurisdictional competition and conflict in child custody proceedings and to promote cooperation among the state courts. *Melgar v. Campo*, 215 Ariz. 605, 606 ¶ 8 (App. 2007) (citing *J.D.S. v. Franks*, 182 Ariz. 81, 86-87 (1995)). Under the UCCJEA, absent temporary emergency jurisdiction, a court’s jurisdiction to make an initial custody determination typically turns on the home state of the child. A.R.S. § 25-

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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1031(A). “Home state” is the “state in which the child lived with a parent or a person acting as a parent for at least six consecutive months immediately before commencement of a child custody proceeding.” A.R.S. § 25-1002(7)(a).

¶8 Mother first argues Utah is M.C.’s home state. Alternatively, Mother argues that even if Utah is not M.C.’s home state or Utah declined to exercise jurisdiction, Arizona is not a more appropriate forum because neither M.C. nor a parent, or person acting as a parent, has a significant connection to Arizona. Mother also argues that no evidence suggests the Arizona and Utah courts concluded during the UCCJEA conference that Utah was not M.C.’s home state or that Arizona was a more appropriate forum.

¶9 Assuming without deciding that Utah is M.C.’s home state, Arizona’s exercise of temporary emergency jurisdiction was proper on the record provided. An Arizona court “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 . . . is subjected to or threatened with mistreatment or abuse.” A.R.S. § 25-1034(A). The court that exercises temporary emergency jurisdiction is required, upon notice of an existing custody proceeding, to contact the issuing court to resolve the emergency, protect the safety of the parties and determine a duration of the temporary order. A.R.S. § 25-1034(D).

¶10 Here, the Arizona and Utah courts held such a conference. Apparently without objection, the superior court reported at a pretrial hearing that it had conferred with the Utah court and that the Utah court had dismissed the guardianship petition Grandfather filed there, leaving Arizona as having the only active case with jurisdiction. Although Mother argues there is no record evidence supporting this conclusion, any evidentiary gap is attributed to Mother’s failure to provide such evidence. *See* Ariz. R. Civ. App. P. 11(c) (imposing duty on appellant to ensure record contains transcripts of all proceedings and documents deemed necessary for proper consideration of issues on appeal). Accordingly, this court presumes the missing portions of the record support the finding that Arizona has jurisdiction. Moreover, the record provided on appeal supports the superior court’s finding that M.C. was dependent as to Mother, a finding Mother does not challenge on the merits, apart from challenging jurisdiction.

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¶11 Given this record, the superior court had subject matter jurisdiction, by exercising temporary emergency jurisdiction, to adjudicate M.C. dependent and did not abuse its discretion in doing so.

CONCLUSION

¶12 Because the superior court's jurisdiction was proper under the UCCJEA, the dependency finding is affirmed.



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