

Family Law Focus

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A review of In re Aaron D.165 Cal.App.4th 1546

CASE SUMMARY

This case examines the State of jurisdiction in child custody issues.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions

This case involves a single mother who was raising two children in Texas and later moved to California. Both the Texas Department of Family and Protective Services and San Bernardino County Department of Children's Services had initiated investigations into the children's welfare.

Both children suffered from medical and learning disabilities. Mother had a difficult time maintaining a safe and stable residence for the two children. The Texas Department of Family and Protective Services was investigating the family situation because of allegations of physical abuse, medical neglect, neglectful supervision and substance abuse by the Mother.

Mother and her new husband, not the father of the children, moved to California. The San Bernardino County Department of Children's Services began an investigation into the family situation after Aaron, the son, was seen at the local hospital and it was

found he had multiple suspicious bruises about his head, face, stomach and back.

The Stepfather was arrested for assaulting Mother. The biological father of the children remained in Texas but had been arrested numerous times for physically abusing Mother and the children and for substance abuse.

San Bernardino County DCS took the children into protective custody and filed a W&I 300 removal of custody petition on their behalf. At the detention hearing the children were formally removed from the parents and placed into a foster home.

The UCCJEA describes children's home state as being the state that the children lived in for the last six months.

Mother returned to Texas. The children were eventually declared dependents of the court and left in the foster home. The children did well both emotionally and physically in the foster home. The caretaker was willing to adopt both children and the children had a bond with her.

Mother entered into a common law marriage in Texas, got a job and was living rent free in her Mother-in-law's rental unit. Mother had a third child by her common law husband. The relationship did not last long and Mother was eventually thrown out by the Mother-in-law and her infant son was removed from her care due to injuries



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suffered by the new born in a car crash. Mother became homeless.

The San Bernardino court eventually terminated Mother's parental rights and selected a permanent plan of adoption for the children.

Appeal: Mother appealed the decision of the California Juvenile Court claiming the California court did not have jurisdiction to determine custody issues and that under the [Uniform Child Custody Jurisdiction and Enforcement Act \(UCCJEA\)](#), Texas had jurisdiction of the children. She requested all orders made by the California Court be reversed.

Discussion:

The UCCJEA is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions and governs juvenile dependency proceedings. Under UCCJEA the court attempts to determine the children's "home state" prior to making custody orders. The Act describes the home state as being the state that the children lived in for the last six months. Here, the children were born in Texas and moved to California. One month after moving to California the children were taken away from Mother. Texas remained their home state.

Holding: The Court of Appeals held that "if the court of another state has exercised jurisdiction over child custody or visitation either via a child custody determination or the commencement of a child custody proceeding, a California court may not exercise jurisdiction, unless or until the foreign court has determined that California is a more appropriate forum."

A court that otherwise lacks subject matter jurisdiction to make or modify a child custody determination can make a temporary emergency order "if the child is present in this state and it is necessary in an emergency to protect the child because the child is subject to, or threatened with, mistreatment or abuse. The California court made a temporary emergency order to protect the children.

Since Texas had already started an investigation and there was a custody matter pending in Texas the California court must contact the Texas court to determine if the Texas court would continue to exercise jurisdiction. Without this contact the orders by the California court can be voided.

In this case the Court of Appeals affirmed the jurisdiction of the Texas courts but did not void the decisions of the California court. It ordered the California Juvenile Court to contact the appropriate court in Texas and determine if the Texas court wished to retain jurisdiction. If the Texas court wished jurisdiction then the California orders were to be voided but if the Texas court found that it was more appropriate for the California court to make the decisions then the decisions would not be voided.