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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re Tamara T., a Person Coming Under
the Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

Christopher T.,

Defendant and Appellant.

A132508

(Humboldt County
Super. Ct. No. JV0900711, JV0900712)

Christopher T., Sr. (Father) appeals dispositional orders entered by the juvenile court as to his two children, Christopher T. II (Christopher) and Tamara T. (Tamara). He contends on appeal that the juvenile court’s jurisdictional and dispositional findings were erroneous and that the inquiry and notice under the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA; see also Welf. & Inst. Code,¹ § 224 et seq.) were inadequate. We shall conditionally reverse the dispositional orders and direct the juvenile court to ensure compliance with ICWA’s inquiry and notice requirements. In all other respects, we shall affirm the orders.

¹ All undesignated statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

A. Detention and Jurisdiction

Christopher and Tamara are the oldest of the six children of Andrea B. (Mother). Father is not the father of Mother's four younger children. Mother gave birth to Tamara when she was 16 years old, and to Christopher almost two years later. At the outset of these proceedings, Mother and her six children were living with the father of her youngest child.

1. July 10, 2009 Petition as to Both Children

On July 10, 2009, the Humboldt County Department of Health and Human Services (the Department) filed a petition pursuant to section 300 on behalf of Tamara, then 11 years old, and Christopher, then nine years old. According to the petition, Christopher was suffering from emotional damage, and Tamara was at risk of emotional damage, as a result of the conduct of their mother, Andrea B. (Mother). The children had been chronically exposed to domestic violence between Mother and her boyfriend and to "extreme verbal arguments" between Mother and her mother (Grandmother). Christopher had "frequent angry outbursts, aggression, withdrawal, depression, discord with all siblings, enuresis, encopresis, and anxiety," and Tamara had "frequent angry outbursts, aggression, withdrawal, depression, discord with all siblings, and anxiety." The children were not detained. The petition was dismissed on August 10, 2009.

2. April 15, 2010 Petition as to Tamara

The Department again filed a petition on Tamara's behalf on April 15, 2010. The petition alleged Child Welfare Services had received numerous referrals alleging Tamara had suffered neglect due to Mother's inability or unwillingness to supervise or protect her. Mother had allegedly said Tamara was " 'evil and a manipulative person.' " She had told a social worker she did not want Tamara back in her house, and that Tamara could live with her grandmother instead. Grandmother told the social worker she would not care for Tamara. Tamara had said she was afraid of Father because of threats he had made, including threatening to hit her with a belt and to " 'kick[] the shit out of her' " if she ran away from school. Father told the social worker he would assume his role as a

parental figure. He said he would teach Tamara how to behave properly, and that he would “ ‘hit Tamara with a belt or spank her.’ ” Mother had told the social worker she planned to transfer custody of Tamara to Father. Tamara had said Mother smoked Meth and drank alcohol. Mother denied using Meth, saying she smoked only marijuana.

According to the detention report, Tamara had told Grandmother that Mother had threatened to kill her, had told Tamara she hated her, and had called her a “ ‘bitch, stupid and dumb.’ ” Tamara had threatened to commit suicide by overdosing on Mother’s prescription medications; when questioned later, Tamara said her threat had not been serious and that she would not do such a thing. She had reported that Mother had slapped her and grabbed her by the neck.

The juvenile court ordered Tamara detained in foster care or relative care. Father was granted presumed father status.

3. Jurisdiction and First Disposition as to Tamara

A jurisdiction hearing for Tamara took place in June, 2010. According to the jurisdiction report, Tamara had been primarily raised by Grandmother, and had been living with Mother for only about two months. Mother had said she was overwhelmed. Grandmother provided child care for all six of Mother’s children, although Mother had “ ‘fired’ ” Grandmother and “ ‘rehired’ ” her numerous times. The Department had received 40 referrals linked to Mother, beginning in 1998. Mother had been participating in voluntary family maintenance from December 17, 2009 to the time of the jurisdiction report.

Subject to the petition being amended to strike certain allegations, Mother agreed to submit on the jurisdictional report. Father contested the allegations of the petition.

At the jurisdiction hearing, Tamara testified that she had lived with Grandmother most of her life, but was living with Mother when she was 11 years old. Before the dependency proceedings, she saw Father about twice a week, and the visits lasted about six hours. Father had spanked her once in the previous two years, when she would not go to bed. When Father told her he would “kick the shit out of [her]” if she ran away from school, Tamara believed him because of “the face he had,” but on the day she testified,

she did not believe he would do so. Father had never hit her for any reason except punishment or discipline.

On one occasion in April, when Tamara was in a truck about to be taken to a shelter, Father “freak[ed] out,” “yelling and screaming” until the police came. Tamara was frightened. During the previous six months, Tamara had seen Father angry during his visits with her two or more times. Tamara testified that although she felt scared when Father got angry, he did not hurt her.

Father testified that he had spanked Tamara and used a belt on her, but not hard enough to leave any marks. In April, Grandmother had called Father to tell him Tamara’s behavior was out of control. Tamara was refusing to go to school, and Grandmother asked Father to come to her house. Father took Tamara to school. On the way, he made a comment to her about “kicking the shit out of her.” Later that day, he, Mother, and Grandmother considered having Father move into Grandmother’s house to care for Tamara. However, a social worker took Tamara from school that day. Father said he had told a social worker on April 13 that he was not afraid to spank or use a belt if it was necessary. However, he was of the view that at Tamara’s age, the best discipline was to take her privileges away. Father also testified that he did not have legal or physical custody of Tamara.

On June 14, 2010, the juvenile court found true the allegations that both Mother and Grandmother had said they would not care for Tamara and that there was no provision for Tamara’s support. (§ 300, subs. (b)(1) & (g)(1).) It did not find true the allegations that Tamara’s fear of Father and his threats placed her at substantial risk of neglect or abuse.

The juvenile court made dispositional findings and orders as to Tamara on August 2, 2010. The Department’s disposition report had recommended that Tamara be allowed to return to Mother’s home, and expressed the opinion that it would be detrimental to place Tamara with Father because she was afraid of him; the report also noted that Father’s relationship with Tamara was attenuated and he had not been her caretaker for most of her life. The court ordered Tamara placed in Mother’s home.

4. May 5, 2010 Petition as to Christopher

A petition was filed on Christopher's behalf on May 5, 2010. According to the petition and an ensuing hearing report, Mother had thrown shoes at Christopher. In April, Christopher had said he wanted to commit suicide with a gun. He had refused to go to school, had reported that Mother and her boyfriend often fought, and had said he had seen an incident of domestic violence between Mother and her boyfriend.

Grandmother and an aunt had agreed to provide respite care for Mother. Christopher remained in Mother's custody. At a May 27, 2010 hearing, Father was found to be Christopher's presumed father.

5. Jurisdiction as to Christopher

According to the jurisdiction report for Christopher, in April, 2010, after Tamara had been placed in protective custody, Christopher said he would kill himself with a gun. A few days later, he refused to go to school, and said he had witnessed an incident of domestic violence between Mother and her boyfriend. In December 2009, Christopher had told a social worker he and Tamara had lived with Grandmother all their lives. He said Mother often got frustrated with the children and told them she wanted to kill or drown them. Mother had told a social worker she could no longer handle all of her boys and all of their needs.

The parties submitted on the report, and on August 25, 2010, the trial court sustained the allegations of the second amended petition, as amended at the hearing to strike an allegation related to domestic violence, and took jurisdiction over Christopher. The second amended petition's "j-2" allegation that Father's actions toward Tamara placed Christopher at substantial risk of harm had been stricken earlier. The remaining allegations of the second amended petition were that despite four voluntary case plans and numerous services offered to Mother and her family, referrals of neglect and abuse continued; that Christopher had refused to go to school in April 2010, and had disclosed witnessing an incident of domestic violence between Mother and his stepfather; and that Mother and Grandmother were unable or unwilling to care for Tamara and that this

pattern of instability placed Christopher at substantial risk of harm in that he was shuttled back and forth between Mother and Grandmother.

6. Subsequent Petition as to Both Children

The Department filed a subsequent petition on behalf of Tamara and Christopher on August 27, 2010. (§ 342.) As later amended, the petition alleged that Mother had said she was unable to care for the children, and that they were “always fighting, leaving the home without permission and physically assaulting each other and her”; that Mother’s home was in a condition that presented health and safety concerns because neither Mother nor the children would clean up their messes; that Mother had unaddressed mental health needs and Grandmother had expressed concern about Mother’s mental health and suicidal ideation; that Father’s failure to protect Tamara and Christopher from Mother’s actions placed them at risk of abuse or neglect; and that Mother had reported she no longer had food for the children. The only allegation as to Father was the “b-4” allegation, which, as amended, read: “The father’s willful or negligent failure to adequately supervise Tamara and Christopher from the conduct of the mother places them at risk [of] abuse or neglect. This places the children at substantial risk [of] abuse or neglect in which the father should have known and has failed to protect the children from the actions of the mother.”

The jurisdiction report stated that Tamara and Christopher were in a shelter. On August 25, 2010, Mother had said she could no longer care for five of her six children because their behavior was out of control. She had recently had to drive around town trying to find them after they ran away from her. They called her names like “ ‘idiot’ ” and “ ‘fucking bitch.’ ” Mother reported that the children were always fighting, threatening each other with kitchen knives and baseball bats, leaving home without permission, and assaulting each other and her. A social worker had seen Christopher at Grandmother’s home shooting his BB gun, the same gun he had threatened to use to commit suicide in April. In early August, a social worker had visited the home, and found human feces near the walkway gate. She was told it had been caused by one of Mother’s other children, who refused to clean it up. There was a strong smell of urine on

the front porch, along with flies and garbage. The house smelled of urine. Clothing was piled high in the closet, and there were potato chips all over the floor. Mother told the social worker that Christopher would leave his nighttime diaper on the floor of the bathroom, that she would not clean up after the children anymore, and that she would leave the dirty diaper on the bathroom floor. On August 25, 2010, Tamara was reported to be ill with a fever. She was taken to the emergency room and tested for strep throat. Her prescription could not be filled because Mother had not renewed her Medi-Cal card. Grandmother had reported that Mother had been saying she wanted to die. Mother had said her children were “ ‘animals’ ” and she felt she was going to crack. She planned to tell the juvenile court she could no longer care for five of her six children.

An addendum report stated that Tamara recalled Father using insulting names to Mother and her boyfriend. She did not want to live with Father. She said his house was dirty and moldy, and that he smoked marijuana around her and Christopher. Father had had several contacts with the police during 2010: he was observed driving with a suspended license in April, he was arrested for public intoxication in June, he was arrested for a domestic violence restraining order violation in July, and Mother reported in late July that Father was disorderly at her home.

7. Jurisdiction Hearing on Subsequent Petition

Father contested the b-4 allegation. At the October, 2010, jurisdictional hearing, the social worker assigned to the case, Ellen Petitjean, testified that until Tamara and Christopher were detained at the end of August, they had been living with Mother. Father had said that before Tamara and Christopher were taken into protective custody at the end of August, he would often visit Mother's home and see things he did not approve of, such as “ ‘partying,’ ” and Father would “make a scene” until police officers arrived. Mother had told Petitjean that Father often came to her home uninvited and yelled at her in front of the children. Father and Mother lived in the same city, about a 10 or 15 minute walk away.

When Petitjean visited Mother's home in early August, Mother said she did not want to keep cleaning up the children's messes. Petitjean agreed that the children were

old enough to clean up after themselves, and she and Mother agreed to work with the children to get them to start cleaning up. Petitjean did not discuss the condition of the house with Father. However, the house was obviously not clean, and its smell would have been obvious to anyone who went inside. Petitjean testified that Father knew the children ridiculed Mother and disobeyed her, because when the children misbehaved Mother would often call Father to talk to them, and the children would “kind of snap to.”

Mother testified that when Tamara and Christopher were living with her during July and August, Father had unsupervised visits with them several times a week at his own convenience. He would come into the house without knocking when he wanted to see them. Mother and Father would sometimes argue when Father came over to pick up the children, and Father complained about the condition of the home. Mother had gone “on strike,” and the house was dirtier than usual. During that time, Mother was depressed because her relationship with her boyfriend had ended, and on one occasion Mother asked Father for a break. Father said he was busy, but would contact her later. Father was sometimes “reeking of alcohol and belligerent” when he went to Mother’s house.

Father testified that he visited Mother’s home five or six times during August, when the children were living with her. He would talk with Mother for a few minutes before taking the children to his home. When Father criticized Mother’s parenting skills, the discussion would turn into an argument. On one occasion he complained to Mother that the house was messy, with potato chips on the floor. When he came to the house a couple of days later, it had been cleaned up. Christopher would often call Father and visit on his own. Father believed Tamara needed more supervision, and did not believe he had any control over what was happening in Mother’s house toward the end of August.

The juvenile court sustained the amended allegations of the first amended subsequent petition. In doing so, it noted that Father had free access to the children, and that he was able to “exercise his duty to rescue and extract them from a bad situation,” and to provide some respite that could have alleviated the necessity of detention.

8. *Disposition After Subsequent Petition*

The disposition report recommended that the children not yet be returned to Mother. It reported that Father had “unaddressed anger, possible mental health and criminal issues,” and that he was recently homeless, since he had been asked to leave the home he shared with his sister. Father had said he was unwilling to work with the Department on any type of case plan or services. An addendum report confirmed that Father had rejected any assistance from the Department. Christopher had been placed with his paternal aunt, and Father—who had been provided unsupervised visitation—had been visiting him after school.

A disposition hearing took place on December 13, 2010. Before the hearing, the Department informed the juvenile court that a plan had been agreed upon to provide Mother with additional services and support, and for Christopher and two of his brothers to return to Mother’s home. At the disposition hearing, the juvenile court found as to Tamara that there would be a substantial danger to her health or well-being if she were returned home, that there were no reasonable means to protect her without removing her from the physical custody of Mother and Father, and that the facts upon which the decision to remove her were based on Mother’s inability to supervise or protect her and Father’s inability to protect her from Mother’s conduct and his failure to provide regular care for her. The court also found by clear and convincing evidence that placement with her noncustodial parent, i.e., Father, would be detrimental to her. Christopher was placed in Mother’s home under the juvenile court’s supervision, and Tamara was placed in foster care.

II. DISCUSSION

A. Jurisdictional Findings and Order

Father contends the jurisdictional findings on the amended subsequent petition were erroneous because as a matter of law, Father had no duty to rescue Tamara and Christopher from Mother’s actions. That is the case as to Tamara, he argues, because the juvenile court had assumed jurisdiction over her in June, 2010, and as a result the court legally stood in loco parentis as to her. (See *In re D.R.* (2010) 185 Cal.App.4th 852, 859

[county's social services agency stands in loco parentis to the minor].) As a result, Father contends, he "no longer had any legal duty to 'rescue' Tamara" from her placement with Mother. As to Christopher, he argues, he had no duty to rescue because he did not have custody of Christopher, and moreover, "once the Department intervened in the case Christopher was 'in the care and custody of his mother' pursuant to the Department's [May 27, 2010] non-detention report." Therefore, according to Father, the Department, not he, had the duty to rescue Christopher from Mother.

The Department counters that this dispute is not justiciable. It relies on a recent case from Division One of the First Appellate District, *In re I.A.* (2011) 201 Cal.App.4th 1484 (*I.A.*). The father there had contested jurisdictional findings involving his conduct (domestic violence and his criminal history) on the ground there was no evidence his conduct presented a substantial risk of harm to the minor, but did not challenge the jurisdictional findings based on the mother's drug abuse. (*Id.* at p. 1487, 1489.) The appellate court concluded the issues the father raised "present[ed] no genuine challenge to the court's assumption of dependency jurisdiction." (*Id.* at pp. 1490-1491.) As the court noted, the main concern of the dependency law is the protection of children, and as a result of this focus, "it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is ' "good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent." ' [Citation.] For this reason, *an appellate court may decline to address the evidentiary support for any remaining*

jurisdictional findings once a single finding has been found to be supported by the evidence. [Citations.]” (I.A., supra, 201 Cal.App.4th at pp. 1491-1492, italics added.)

Because the father in *I.A.* did not challenge the jurisdictional findings involving the mother’s actions, no decision of the appellate court would result in a reversal of the trial court’s order asserting jurisdiction. (*Id.* at p. 1492.)

Similarly here, Father does not challenge the jurisdictional findings based on Mother’s conduct. However, while acknowledging the rule of *I.A.*, he contends we should nevertheless consider his claims on the merits rather than finding them moot because the jurisdictional findings he challenges have had, and continue to have, practical and legal consequences. (See *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 [“An issue is not moot if the purported error infects the outcome of subsequent proceedings”].) In particular, according to Father, the b-4 finding as to his conduct meant that he would no longer be treated as a nonoffending, noncustodial parent for purposes of section 361.2, which provides that when a court orders a child removed pursuant to section 361, the court “shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).)

The court in *I.A.* considered a similar contention and, on the facts of that case, rejected it. The court concluded that the jurisdictional finding did not prejudice the father’s rights under section 361.2, in part because that statutory provision does not require a parent to be nonoffending to be entitled to its benefits. (*I.A., supra*, 201 Cal.App.4th at p. 1494; see also *In re V.F.* (2007) 157 Cal.App.4th 962, 970 (*V.F.*); but see *In re A.A.* (2012) 203 Cal.App.4th 597, 608 [parent must be both nonoffending and noncustodial to be entitled to consideration under section 361.2, i.e., parent must retain right to physical custody and must not have been subject of previous detriment finding

and removal].) Under the reasoning of *I.A.*, the jurisdictional finding as to Father would not prevent him from seeking custody of the children under section 361.2.

In any case, even assuming the jurisdictional finding as to Father might affect the juvenile court's later actions, we reject his contention on the merits, and conclude the juvenile court did not err in sustaining the allegation based on Father's conduct. There was evidence that during the summer of 2010, while the children were living with Mother, Mother was overwhelmed and unable to care for them properly. Father had free access to Mother's home and could take the children for visits whenever he wished, and they had agreed that he would be the first person she called if there were any problems. However, there is evidence that when he visited her and the children during this time, he was sometimes drunk, that his criticisms of her would escalate into arguments, that he would yell at her in front of the children, and that he did not assist Mother when she asked him for a break. Indeed, the court noted in making its jurisdictional finding as to Father that nothing in the court's orders, or in the relationship between Mother and Father, would have prevented Father from taking the children for visits, including overnight visits. We recognize that Father did not have custody of the children and that there were ongoing dependency cases with respect to both Tamara and Christopher. However, Father has not persuaded us that the juvenile court could not reasonably conclude his conduct constituted a failure to protect the children from a risk of harm or illness. (§ 300, subd. (b).)

B. Dispositional Findings and Order

Father contends certain of the dispositional findings as to Tamara are not supported by the record. In particular, he challenges the findings that there would be a danger to Tamara if she were returned home and that there were no reasonable means to protect her without removing her from the physical custody of Mother and Father, and that her return to " 'the parents' " would create a substantial risk of detriment to her. Father contends these findings were erroneous because he did not have custody of Tamara at the time she was removed from Mother's home. However, Father did not call

these asserted inaccuracies to the attention of the juvenile court, and accordingly we will not consider them on appeal. (See *In re S.C.* (2006) 138 Cal.App.4th 396, 406.)

We are not persuaded by Father's argument that his counsel was ineffective in failing to object to these findings. To prevail on such a claim, a parent must show that counsel failed to act in a reasonably competent manner, and that the claimed error was prejudicial; that is, "that it is 'reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" [Citation.] [Citation.]" (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252-1253; see also *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Father has made no showing of prejudice here.

Father also contends the juvenile court did not comply with the requirements of section 361.2. As we have noted, under 361.2, subdivision (a), the juvenile court must determine whether there is a non-custodial parent who wishes to assume custody of the child, and if that parent requests custody, place the child with the parent unless the court finds such placement would be detrimental to the child's safety, protection, or well-being. (See also *V.F.*, *supra*, 157 Cal.App.4th at p. 970.) Subdivision (c) requires the court to make a finding on the basis of its determination under subdivision (a).

Here, the juvenile court found "by clear and convincing evidence that placement at this time with the non-custodial parent would be detrimental to the child." The court also found that the decision to remove Tamara was based on "the inability of the mother to supervise or adequately protect the children *and the father to provide and protect from the conduct of the mother with whom the children had been left and his failure to provide regular care for the children.*" (Italics added.) The court had previously made the jurisdictional finding as to both Tamara and Christopher that Father's willful failure to adequately protect them from Mother's actions placed them at substantial risk of abuse or neglect. While brief, this reference sufficed to explain the basis for the juvenile court's decision not to place Tamara with Father.

C. ICWA Notice

Father contends the Department did not conduct an adequate inquiry of Tamara and Christopher's Indian ancestry under ICWA. Where a child is at risk of entering foster care or is in foster care, section 224.3, subdivision (a), and California Rules of Court, rule 5.481(a), impose on both the juvenile court and the Department "an affirmative and continuing duty to inquire" whether a dependent child is or may be an Indian child. The social worker must ask the parents if the child has Indian heritage (Cal. Rules of Court, rule 5.481(a)(1)), and upon a parent's first appearance in a dependency proceeding, the juvenile court must order the parent to complete a Parental Notification of Indian Status form (Cal. Rules of Court, rule 5.481(a)(2))." (*In re N.E.* (2008) 160 Cal.App.4th 766, 769.) Moreover, if the social worker knows or has reason to know that an Indian child is or may be involved, the social worker "must make further inquiry as soon as practicable by: [¶] (A) Interviewing the parents, Indian custodian, and 'extended family members' " to gather information about the child's Indian ancestry, including the names of the child's biological parents, grandparents, and great-grandparents, their addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information. (Cal. Rules of Court, rule 5.481(a)(4); § 224.2, subd. (a)(5); see also § 224.3, subd. (c).) ICWA notice requirements are strictly construed, and the notices must contain enough identifying information to be meaningful. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

Here, Mother did not report any Indian ancestry. The Department's reports indicated that Father would be provided with an ICWA-020 form requesting that he report any Native American ancestry. It appears that he reported such ancestry, as in Tamara's case, the Department provided notice in May, 2010, to various Indian tribes—the Bear River Band/Rohnerville Rancheria, the Blue Lake Rancheria, and the Wiyot tribes, as well as to the Bureau of Indian Affairs (BIA)—indicating Tamara might have Indian ancestry through Father. The notice provided Father's name, address, and birth date; the name of his mother and her possible tribes, the name of his father and his dates of birth and death; the first name of one of his grandmothers; and the name and dates of

birth and death of his grandfather—based on the last name, apparently the paternal grandfather. No other family information was provided, and the other boxes for family information were marked “No information available.” A few days later, the Blue Lake Rancheria responded that Tamara was not eligible for membership in the tribe because none of the family names provided matched the family names of the original five families of the Rancheria. The court noted in a June 8, 2010, hearing, that it had received a notice from the Wiyot tribe that Tamara was not enrolled or eligible for enrollment. The record does not include any notices sent in Christopher’s case, or any other attempt to gather information on the children’s possible Indian heritage. The juvenile court found in both Tamara’s and Christopher’s cases that ICWA did not apply.

In the circumstances of this case, we agree that the Department’s inquiry was inadequate. The record indicated that the Department would inquire of Father regarding his possible Indian ancestry, and we presume that it did so. The information provided, however, was incomplete; it lacked the former and current addresses and birthdate of Father’s mother, through whom he claimed Indian ancestry, and appears to contain no information whatsoever about her family.² Nor were any names included in the box for “Other relative information,” a category that included “aunts.” During the course of the dependencies, the Department became aware of the name and address of the children’s paternal aunt, as Christopher was placed with her on November 5, 2010. There is no indication, however, that the Department inquired of her whether she had any further information about Father’s mother or grandparents. In light of the scant information provided by Father—and the clear directive of California Rules of Court, rule 5.481(a)(4) that if the social worker has reason to know that an Indian child “may be involved,” the social worker “must make further inquiry” by interviewing, among others, “ ‘extended

² Since the grandmother named “Shari or Cherie” was in the same column as the grandfather who shared a last name with Father, we presume she was his paternal grandmother. In any case, the bare first name would presumably not allow a tribe to determine whether she was a member. The lines for Father’s remaining grandparents were all marked “No information available.”

family members’ as defined in 25 United States Code section[] . . .1903(2)”³—we conclude the Department did not meet its obligation of inquiry under ICWA as to either Tamara or Christopher. (See *In re A.G.* (2012) 204 Cal.App.4th 1390, 1397 [ICWA error where, despite continuing duty of inquiry, agency did not attempt to interview any of his family members about child’s Indian heritage, although relatives were involved in proceedings or in contact with the agency, and did not identify known family members in notices to tribes].)⁴

We cannot conclude the error was harmless. This is not a case in which there is no indication the child involved had Indian ancestry. (See, e.g., *In re H.B.* (2008) 161 Cal.App.4th 115, 122 [error in inadequate ICWA inquiry harmless where parent never asserted child might have Indian ancestry]; *In re N.E.*, *supra*, 160 Cal.App.4th at pp. 770-771 [same].) Rather, Father appears to have claimed Indian heritage and provided the Department with enough information to require it to make further inquiry. (See *In re A.G.*, *supra*, 204 Cal.App.4th at p. 1401.)

The Department appears to argue, however, that ICWA notice as to Christopher was not necessary because he was returned to Mother at the December, 2010 disposition hearing. It is true that ICWA’s notice requirements apply when a child is at risk of entering foster care or is in foster care. (§ 224.3, subd. (a).) However, here both Christopher and Tamara were placed in foster care in August, 2010. In November of the same year, Christopher was placed with a relative caregiver, and the Department recommended to the court that the placement continue, although the parties eventually reached an agreement to allow Christopher to return to Mother. In an analogous

³ 25 U.S.C. 1903(2) includes adult aunts among extended family members.

⁴ As an aside, we note that the Department sent notices to the tribes and the BIA only as to Tamara. Christopher was not mentioned in the notices. Because we conclude that even as to Tamara, the ICWA inquiry was inadequate, we need not reach Father’s contention that the Department could not properly rely on the notices as to Tamara to conclude Christopher was not an Indian child. (But see *In re E.W.* (2009) 170 Cal.App.4th 396, 400-402 [no need to reverse and remand where ICWA notice referred to only one of two dependent children].)

circumstance, a sister court has concluded “the issue of possible foster care placement was squarely before the juvenile court,” and decided the matter on the merits. (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 698, 700 [child removed from mother and placed in emergency shelter home; agency recommended continued foster care placement; court then ordered child placed in father’s custody]; compare *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 [defective ICWA notices harmless error where department did not pursue foster care, but recommended from beginning that children remain with mother].)

Accordingly, we shall remand the matter to the juvenile court for proper ICWA notice.

III. DISPOSITION

The disposition orders are reversed and the matter is remanded to the juvenile court with directions to order the Department to obtain complete and accurate information about the children’s paternal relatives and to provide corrected ICWA notice to the relevant tribes. If a tribe intervenes after proper inquiry and notice, the court shall proceed in accordance with the provisions of ICWA. If no tribes intervene

after receiving proper notice, the orders shall be reinstated. In all other respects, the orders appealed from are affirmed.

RIVERA, J.

We concur:

REARDON, ACTING P. J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.