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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**In re J.L. et al., Persons Coming Under  
the Juvenile Court Law.**

**SOLANO COUNTY HEALTH AND  
HUMAN SERVICES DEPARTMENT,**

**Plaintiff and Respondent,**

**v.**

**T.W.,**

**Defendant and Appellant.**

**A133555**

**(Solano County  
Super. Ct. Nos.  
J34366, J40819, J40820)**

Appellant T.W. appeals from dispositions entered after the juvenile court declared her children J.L., P.B., and S.B. to be dependent children within the meaning of Welfare and Institutions Code section 300.<sup>1</sup> She contends the dispositions must be reversed because child welfare officials did not comply correctly with the requirements of the Indian Child Welfare Act (ICWA). We conclude the officials in question did not commit any prejudicial errors and will affirm.

<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

## I. FACTUAL AND PROCEDURAL BACKGROUND

We need not provide a detailed statements of facts given the nature of the issues that have been raised. In essence the record indicates appellant has a long history of referrals to child welfare officials. In September 2003, a doctor reported that appellant's six-month-old daughter H.G. sustained a suspicious skull fracture. H.G.'s father was arrested when he admitted he hit the baby by accident during a domestic dispute with appellant. Three months later, H.G. suffered a second likely nonaccidental head injury. Based on these incidents, a petition was filed alleging H.G. and her brother J.L. were dependent children within the meaning of section 300. The children were detained but later returned to appellant's custody. The petition was dismissed in February 2004.

In the years that followed, appellant came to the attention of child welfare officials several additional times based on allegations of neglect due to drug abuse. Then in May 2009, officials again were notified when appellant tested positive for methamphetamine during the birth of her sixth child N.W.

Two years later, a considerably more serious event occurred. On April 25, 2011, appellant's two-month-old son M.M. was found dead in the family home. Appellant and her partner A.B. were caring for the child at the time and subsequent testing determined M.M. had been dead a long time before anyone called the police.

Based on this incident a petition was filed alleging appellant's then eleven-year-old son J.L., four-year-old daughter P.B., and two-year-old daughter S.B. were dependent children within the meaning of section 300. In April 2011, the court removed all three children from appellant's custody.

The report prepared prior to the jurisdictional hearing showed appellant faced many challenges. Appellant had a long criminal history that included charges for drug possession and theft. She also admitted to an eight-year history of heavy methamphetamine use. In addition, appellant had been the victim of repeated domestic violence. Indeed, M.M.'s father was then in prison for stabbing her while she was pregnant with the child.

Based on these and other facts, the court found J.L., P.B., and S.B. to be dependent children within the meaning of section 300. At disposition, the court ruled P.B. and S.B. should remain out of appellant's care and ordered that appellant receive reunification services. Appellant waived reunification services as to J.L. so her grandmother, Lucille W., who had been caring for J.L. for many years, could be named his legal guardian. Subsequently, the court did, in fact, appoint Lucille W. as J.L.'s legal guardian.

## II. DISCUSSION

### A. ICWA Background

Appellant contends child welfare officials did not comply correctly with the requirements of ICWA. To put these arguments in context further background is necessary.

The report prepared prior to the jurisdictional hearing discussed whether ICWA applied. Appellant signed a form that indicated she had some Indian ancestry, and a social worker interviewed the children's grandmother Linda W. who said her grandmother Lorraine G. lived on a reservation in Mississippi. Linda W. did not remember the name of the tribe. The social worker also reviewed prior dependency records for H.G. and J.L. and noted the Solano County Health and Human Services Department (Department) had made an inquiry to the Cherokee tribes in 2004. The Cherokee Nation and the Cherokee Center for Family Services both responded and said no record was found as to Cherokee ancestry for H.G. or J.L.

In June 2011, the social worker sent a form approved by the Judicial Council entitled, "Notice of Child Custody Proceeding For Indian Child" to the Bureau of Indian Affairs (BIA), and the Cherokee, Choctaw, Quapaw, Chickasaw, and Tunica-Biloxi tribes.

At the jurisdictional hearing, the court found that the Department had made active inquiries to obtain information regarding the children's Indian ancestry and that proper notice had been provided under ICWA.

Prior to the dispositional hearing, the Department sent another notice of child custody proceeding for indian child to the BIA and to representatives of the Cherokee

Nation, Choctaw Nation of Oklahoma, Chickasaw Nation, Eastern Band of Cherokee Indians, Jena Band Choctaw, Mississippi Band of Choctaw Indians, Tunica-Biloxi Indian Tribe of Louisiana, Mississippi Band of Choctaw Indians, Quapaw Tribal Business Committee, and United Keetoowah Band of Cherokee.

At the dispositional hearing, the court again found the Department had complied with ICWA and that it had made active inquiries to determine the children's Indian ancestry.

Appellant now challenges the Department's efforts on two broad grounds. We will address them separately.

B. Whether the Department Conducted its Investigation with Due Diligence

The record in this case shows Department officials investigated the children's Indian heritage by speaking with appellant and her mother and reviewing the prior dependency file. Based on the information obtained, the Department notified the BIA and several tribes about the dependency proceedings.

Appellant now contends the Department failed to use due diligence when conducting its investigation. She bases her argument on section 224.3, subdivision (c)<sup>2</sup> and California Rules of Court<sup>3</sup> rule 5.481(a)(4).<sup>4</sup> Both state that a social worker is required to make "further inquiry" to establish a child's possible Indian heritage. Appellant notes that documents in the dependency files show the children had several relatives including appellant's sister, Linda W., a great-grandmother Lucille W., and a maternal great-aunt and great-uncle, Betty and Nathaniel C., but the record does not state

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<sup>2</sup> As is relevant here, section 224.3, subdivision (c) states, "If the . . . social worker . . . knows or has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information . . . ."

<sup>3</sup> All further rule references are to the California Rules of Court.

<sup>4</sup> As is relevant here, rule 5.481(a)(4) states, "If the social worker . . . knows or has reason to know that an Indian child is or may be involved, that person . . . must make further inquiry as soon as practicable by: [¶] (A) Interviewing the parents . . . and 'extended family members' . . . . to gather the information[.]"

whether Department officials asked those individuals about the children’s Indian heritage. Appellant argues this lack of evidence demonstrates Department officials failed to conduct an adequate inquiry as is required by section 224.3, subdivision (c) and rule 5.481(a)(4).)

The court in *In re Gerardo A.* (2004) 119 Cal.App.4th 988 faced this same argument. Evidence in the record there showed the Department had spoken to the children’s mother and maternal aunt about their possible Indian heritage. On appeal, the appellant argued Department officials erred because they did not speak with additional relatives such as the children’s maternal grandmother or older maternal relatives. The *Gerardo A.* court rejected that argument because it was “based on speculation.” (*Id.* at p. 995.) As the court explained, “The fact that the record is silent regarding whether the department spoke with anyone other than the children’s mother and maternal aunt does not necessarily mean the department failed to make an adequate inquiry for Indian heritage information. Similarly, appellant assumes without any basis in the record that the maternal grandmother or other older maternal relatives were available to be interviewed in 2001 . . . . Under these circumstances, we need not address appellant’s underlying contention that it is the Department’s duty under ICWA to interview family elders.” (*Ibid.*)

We reach the same conclusion here. The fact that the record does not expressly state Department officials asked the relatives appellant has identified about the children’s Indian heritage does not prove that officials failed to make those inquiries. We reject appellant’s argument because it is based on speculation.

In a related argument, appellant argues Department officials violated rule 5.637<sup>5</sup> because they failed to use “due diligence” in trying to locate and notify the children’s adult relatives after they were removed from her home. We find no place in the record

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<sup>5</sup> As is relevant here, rule 5.637(a) states, “Within 30 days of a child’s removal from the home of his or her parent . . . if the child is in or at risk of entering foster care, the social worker or probation officer must use due diligence in conducting an investigation to identify, locate, and notify all the child’s adult relatives.”

where appellant raised this argument in the court below. It is forfeited for purposes of appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The argument is also based on speculation. The fact that the record does not expressly describe the efforts the Department made to contact the children's relatives after they were removed from appellant's custody *does not* mean the Department failed to use due diligence when making those inquiries. (*In re Gerardo A., supra*, 119 Cal.App.4th at p. 995.) We find no error on this ground.

C. Whether the Department Notified the Tribes Correctly

As we have stated, the Department notified the BIA and several Indian tribes that dependency proceedings concerning the children were ongoing using forms that were approved by the Judicial Council. Among other things the forms explained that appellant and Linda W. (who was appellant's mother and the children's grandmother) both reported the children might have some Indian ancestry.<sup>6</sup>

Appellant now contends the Department erred because the forms it sent to the tribes did not include the names of her sister, Wanda M., and the children's great-grandmother, Lucille W., both known to the Department.

Appellant is correct in part. Section 224.2 subdivision (a)(5)(C) states that a notice sent to an Indian tribe concerning a dependency matter should include "All names known of the Indian child's biological parents, grandparents, and great-grandparents . . . ." and the notices the Department provided *did not* include the name of Lucille W. who was the children's great-grandmother. This was error. But this type of error is not always prejudicial (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1531), and the error here was harmless. While the Department failed to provide the name of Lucille W., it did provide the names of appellant, her mother Linda W., and the children's great, great-grandmother Lorraine G. and there is no indication that the Department received a response from any

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<sup>6</sup> As is relevant here, rule 5.637(a) states, "Within 30 days of a child's removal from the home of his or her parent . . . if the child is in or at risk of entering foster care, the social worker or probation officer must use due diligence in conducting an investigation to identify, locate, and notify all the child's adult relatives."

of the tribes. On this record, we conclude the Department's failure to provide the name of the children's great-grandmother was harmless.

Our conclusion on this point is fully supported by case law. In *In re Cheyanne F.* (2008) 164 Cal.App.4th 571, the mother Patricia argued the Department erred because it did not include the names of her parents and grandparents in the notice that was sent to the Indian tribe with which the dependent child was possibly affiliated. The *Cheyenne F.* court agreed the Department erred but concluded the error was harmless because "in the absence of any indication that information concerning Patricia's family was relevant to the tribe's inquiry, there is no basis upon which to conclude that the outcome would have been different if [the Department] had provided . . . the information concerning her parents and grandparents." (*Id.* at p. 577.)

We reach the same conclusion here. The Department did not supply the name of Linda W. who was the children's great-grandmother. However, there is no indication in the record that that information was relevant or probative in the tribes' inquiry. As in *Cheyenne F.* we conclude there is "no basis upon which to conclude that the outcome would have been different" (*In re Cheyanne F., supra*, 164 Cal.App.4th at p. 577) if the Department had provided the information concerning the great-grandmother.

The Department's failure to provide the name of Wanda M. is even less supportive of appellant's challenge to the Department's due diligence. Wanda M. is appellant's sister and a maternal aunt is simply not one of the persons whose name must be provided. (See § 224.2 subdivision (a)(5)(C).) Appellant seems to contend the Department was required to include Wanda M.'s name in the ICWA notices because the Judicial Council form includes a section where information about "[o]ther relative[s] (e.g., aunts, uncles, siblings, . . .)" can be provided. While that is true, appellant fails to acknowledge that the "[o]ther relative information" portion of the form is described as one of the "optional questions [that] may be helpful in tracing the ancestry of the child . . ." Appellant has not cited and we are not aware of any authority that holds the Department can be said to have erred simply because it failed to provide information that is optional.

Next, appellant argues the Department erred because the information it provided on the ICWA forms was inconsistent in two respects. First, appellant notes that at one point the forms described Lorraine G. as the mother's grandmother while at another point she was described as the grandmother of the children's grandmother. Appellant contends the tribes would have no way of knowing which of these descriptions was correct. While the forms do describe Lorraine G.'s status inconsistently we fail to see how this resulted in any prejudice. The critical fact was that Lorraine G. had information about the children's possible Indian ancestry. That information was relayed to the tribes. Whether Lorraine was the children's great-grandmother or great, great-grandmother was not relevant. There is no basis on which to conclude the result would have been different if Lorraine G.'s status had been described correctly. (*In re Cheyenne F.*, *supra*, 164 Cal.App.4th at p. 577.)

Appellant also argues the information the Department provided on the ICWA forms was inconsistent because at one point Department officials checked a box that stated it was "unknown" whether any relative had lived on an Indian reservation, while at another point Department officials acknowledged that the children's grandmother Linda W. said her grandmother Lorraine G. "resided on a reservation in Mississippi." It is not at all clear that these two statements are inconsistent. While the children's grandmother reported that her grandmother lived on a reservation, there is nothing in the record that indicates that report was confirmed. Thus, it may be correct for the Department to state it did not "know" if any member of the children's family had lived on a reservation. In any event, as another court explained when rejecting a nearly identical argument, "[n]o one reading the form would be misled into believing" that it was unknown whether any member of the child's family had ever lived on a reservation when another portion of the form indicated a relative may in fact have lived on a reservation. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1531.) Any possible error was harmless.

Next, appellant argues the notices the Department sent to the various Indian tribes were inadequate because they were addressed to the "ICWA representative" of each tribe rather than to the specific individual listed as the contact person for ICWA purposes in the

Federal Register. Appellant also complains that one of the notices was sent to an address that is different from that listed in the Federal Register. While appellant is correct, this was not error. As another court stated, “Requiring literal compliance solely by reference to the names and addresses listed in the last published Federal Register would exalt form over substance. The Department should not be hamstrung by limitation to only the names and addresses provided for the tribes in the Federal Register if a more current or accurate listing is available and is reasonably calculated to provide prompt and actual notice to the tribes. In such circumstances, it is for the juvenile court to determine as a matter of fact from all the circumstances whether appropriate notice has been given.” (*In re N.M.* (2008) 161 Cal.App.4th 253, 268.) Here, it was entirely reasonable for the Department to address its notices to the “ICWA” representative of the various tribes rather than to the specific person identified in the Federal Register. Doing so would allow the notices to be processed correctly in those instances where the specific person identified in the Federal Register had been replaced or was being assisted by some other person. As for the address that was different from that listed in the Federal Register, we note that address is contained on a list that is maintained by the California Department of Social Services for service of ICWA documents.<sup>7</sup> The juvenile court here could and impliedly did conclude that the notice given was adequate.

Appellant also contends the Department erred because it did not submit to the court prior to the jurisdictional or dispositional hearings signed returned mailing receipts or responsive letters from any of the tribes who had been notified. But section 224.2, subdivision (c) states that “all return receipts and responses *received*, shall be filed with the court in advance of the hearing . . .” (italics added), and here there is no evidence that the Department received any return receipts or responses. The Department did not err when it failed to submit documents it did not receive.

Finally, we acknowledge that the ICWA notices that were provided in this case were not perfect but perfection is not required. (*In re I.W.*, *supra*, 180 Cal.App.4th at p.

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<sup>7</sup> See <http://www.childsworld.ca.gov/res/pdf/CDSSTribes.pdf>

1531.) In our view, the Department's ability to ameliorate the substantial harm appellant had done to her children should not be diminished by what we view as technical, nonprejudicial notice errors.<sup>8</sup>

### III. DISPOSITION

The dispositional orders are affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.

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<sup>8</sup> In the midst of her other arguments, appellant also complains the juvenile court erred because it failed to check certain boxes in its dispositional orders concerning P.B. and S.B. We decline to address these arguments because appellant has not presented them properly. (See rule 8.204(a)(1)(B).)