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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re ASHLEY W., a Person Coming Under the
Juvenile Court Law.

SOLANO COUNTY HEALTH & SOCIAL
SERVICES, CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

W. W., et al.,

Defendants and Appellants.

A133682

(Sonoma County
Super. Ct. No. 3218-DEP)

This appeal has been taken by W. and Crystal, the parents of the minor Ashley, from a judgment in this dependency proceeding pursuant to Welfare and Institutions Code section 366.26 that terminated their parental rights and ordered adoption as the permanent plan.¹ They argue that the juvenile court erred by denying their petitions under section 388 to modify a prior order terminating their reunification services, and by terminating their parental rights and selecting adoption as the permanent plan for Ashley. They also claim that the Department failed to complete a proper inquiry or give proper notice in the case as required by the Indian Child Welfare Act (ICWA). We conclude that the court did not abuse its discretion by terminating parental rights and ordering adoption as a permanent plan for the minor. We must reverse the judgment and remand

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated. For the sake of confidentiality, we will refer to the minor, her parents, her half-sibling, and other relatives by their first names only.

the case to the juvenile court for lack of compliance with the inquiry and notice requirements of the ICWA, but we order reinstatement of the judgment if Ashley is not, on remand, determined to be an Indian child within the meaning of the ICWA.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The present dependency proceeding commenced on November 3, 2009, with a petition filed by the Sonoma County Human Services Department (the Department), that alleged the parents' failure to protect the child, Ashley, then age five, infliction of serious emotional damage to the child, lack of provision for support, and physical abuse of her half-sibling Sarah, then age 14, pursuant to section 300, subdivisions (b), (c), (g) and (j). The petition alleged a frequent and recurrent history of domestic violence between the parents, multiple arrests of the father for domestic violence committed on the mother in the past three years, accidental injury inflicted on the child's sibling during the most recent physical assault on the mother on October 29, 2009, while the child was present and the father was heavily intoxicated, a history of the mother's substance abuse that renders her unable to care for the child, including multiple arrests for possession of controlled substances, possession of controlled substances for sale, possession of hypodermic needles, and being under the influence of alcohol in public. The parents were both arrested following the incident of October 29, 2009, and incarcerated in the Sonoma County detention facility. The child was detained and temporarily placed with paternal relatives.

The jurisdictional/dispositional report recounted the parents' history of physical and substance abuse, and described the assault on October 29, 2009, that precipitated the detention. In addition, the report noted that Crystal had thereafter twice tested positive for alcohol use while in a residential treatment facility, with astronomical blood-alcohol levels, and been incarcerated on November 30, 2009.

The jurisdictional/dispositional report also mentioned that Ashley and Sarah "may be Indian children with the Cherokee tribe." The parents did not provide any "specific information" about Native American heritage, although Crystal stated that her father "might be 1/4 Cherokee and 1/4 Choctaw," and W. indicated that his father's mother

“was ‘full-blood Cherokee.’ ” The child’s paternal aunt subsequently advised an investigator for the Department that she would attempt to learn the identity of her “Native American paternal grandmother.” The investigator made “numerous attempts” to discover “family information,” and the report specified that the paternal aunt could not provide a name for a Native American relative. The report added that notices would be sent “as soon as information is available.”

At a combined jurisdictional and dispositional hearing on January 21, 2010, which was submitted by the parents on the report, the trial court sustained amended allegations and declared the minor a dependent child under section 300, subdivisions (b) and (c). Ashley was removed from the parents’ custody and placed with a paternal aunt and uncle, W.’s sister Teresa and her husband Timothy, along with their daughter Katie, where she was found to be “very happy and comfortable in the home.” The “aunt and uncle” expressed that they were “willing to provide a home for Ashley as long as needed.” Reunification services were provided and conditions were placed on the parents, including: participation in domestic violence, parenting, and relationship counseling; completion of a parenting education program and demonstration of the ability to meet the child’s needs; participation in substance abuse evaluation and completion of residential substance abuse treatment programs; successful graduation from drug dependency court; attendance at weekly domestic violence victims’ groups and receipt of a positive evaluation from each service provider; regular visitation with the child; maintenance of a safe and stable home for the child; and, resolution of pending criminal matters. The court found “insufficient information to determine if the minor may be an Indian child,” and directed the parents to assist the Department with investigation of the matter.

By June 10, 2010, the case proceeded to a six-month review hearing, where the court found that Ashley and Sarah “shall be retained dependents of the Juvenile Court,” reasonable reunification services had been provided, and the parents made “adequate” efforts to alleviate the causes of the dependency. The court ordered continuation of reunification services. The prior placement and visitation ordered remained in full force and effect. The court found that “ICWA does not apply to this case,” as “no new

information related to tribal affiliation” had been provided to the Department “by the parents or extended family members.”

The status review report for the 12-month review hearing, filed December 2, 2010, recommended termination of family reunification services and implementation of a section 366.26 permanency planning hearing. Despite their history of extreme domestic violence, W. and Crystal continued to live in an apartment in a “committed relationship.” They both relapsed and tested positive for alcohol in August of 2010, and the following month Crystal was admitted to a residential treatment facility. Crystal admitted her relapse, but W. did not. W. consistently attended his substance abuse program and his domestic violence treatment group. He exhibited greater “insight” than in the past, although on one occasion in November of 2010, he attended a session in an agitated and apparently “strung out” state. Both parents regularly visited Ashley, and their visits were without concerns. No substantial probability of return to the parents was found. The report recommended termination of reunification services based on findings that while the parents were progressing and “making an effort,” as a couple they needed “further work” and presented a significant risk “related to relapse and domestic violence.” The prior finding that “ICWA does not apply” was reiterated.

At a settlement conference on February 18, 2011, the parties reached an agreement to terminate reunification services to the parents, with the Department to provide a bonding study and further treatment for both parents in the NOVA domestic violence program. Ashley continued to be placed with Teresa and Timothy in Santa Rosa.

The report for the section 366.26 hearing recommended a permanent plan of adoption of Ashley by her paternal aunt and uncle. Bonding studies were not yet complete, so a continuance was suggested.

The Department’s adoption assessment filed on May 16, 2011, found that Ashley was “likely to be adopted,” and recommended termination of parental rights and a plan of adoption. The assessment noted that Ashley’s emotional, behavioral, academic, and social status improved and stabilized while in the custody of her paternal aunt and uncle. She identified positively with her aunt, uncle and cousin as a family, and expressed

without reservation that she wanted to continue to live with them. Ashley stated that her parents were “fun,” but fought “all the time,” used “cuss words,” and yelled, all of which “scared” her. Ashley’s visits with her parents were described as “enjoyable,” yet “stressful and anxiety provoking for her as well.” Her teacher stated that Ashley “appears more tired and unfocused on her work the day after her parent visits.” The Department’s assessment concluded that “[a]lthough interaction between the minor and the birth parents may have some incidental benefit, such benefit does not outweigh the benefit they will gain through the permanence of adoption.” The home of the paternal aunt and uncle was found “suitable” for Ashley; they were “providing Ashley with a loving, safe, structured and nurturing environment where she clearly feels comfortable, safe, and part of a family unit.” According to the assessment, the child has “substantial emotional ties to the potential adoptive parents.” Teresa and Timothy were “very committed to the child and have expressed a desire to adopt.”

An extensive bonding study and report by Dr. Jacqueline Singer was submitted to the court on September 6, 2011, with the objective of evaluating the nature and quality of the parental bond between Ashley and her biological parents, and specifically whether they “occupy a parental role” and have a “positive emotional attachment” to the child that, if severed would be more detrimental to her than the benefit of adoption. Dr. Singer determined that the parents “both . . . love Ashley and experience a bond to W. her.” They are also “able to provide attention to Ashley’s physical needs, comfort, nurturance, affection and stimulation.” Ashley enjoys visits with the parents and accepts nurturance from them. She benefits from contact with them and enjoys interaction with them, but “does not ask about them, nor does she seem to miss them, when she is not in their presence.” Ashley “did not experience any distress, and in fact was rather nonchalant, in separating from both her mother and father after visits.” While she perceives Crystal and W. “in a parental capacity, this relationship appears to be rather limited rather than sustaining.” According to Dr. Singer, if Ashley were to lose contact with her parents “due to adoption,” she “would experience a sense of loss.”

Dr. Singer found that Ashley had little difficulty adjusting to placement with Teresa and Timothy. Her performance in school improved; she appears “happy and content” with them in a “family unit.” According to Dr. Singer, Ashley’s great progress during the placement with Teresa and Timothy is attributable to “both the sense of security that she experiences in relation to her foster parents, but also not having to negotiate the chaos and trauma related to domestic violence and substance abuse.” Ashley “enjoys her visits with her parents,” and should continue contact with them to resolve issues associated with the trauma of witnessing domestic violence and her removal from them, but does not get “the sense of stability from them that would be necessary for her healthy development.” Dr. Singer expressed the opinion that “the parents continue to be at risk for domestic violence,” and severing the parental bond would not “create a detriment that outweighs the permanence of adoption by her aunt and uncle.” Dr. Singer recommended a permanent plan of adoption, with post-adoption contact with the parents.

A joint hearing was subsequently held on the section 366.26 hearing and the parents’ petitions pursuant to section 388 to modify the prior order terminating reunification services and vacate the order setting the section 366.26 hearing. Testimony was received from Dr. Singer, who essentially reiterated the views expressed in her report that while Ashley “does enjoy the time she spends with her parents,” and has “positive feelings” for them, she has an “underlying fear” of her relationship with them “becoming violent or potentially becoming violent or chaotic,” which “creates a certain level of anxiety” that is antithetical to her development. Even if Ashley’s contact with her biological parents is discontinued, Dr. Singer recommended adoption as a permanent plan due to the child’s need for “consistency and stability in her relationship with parental figures.” Ashley perceives her parents as “the kind of relatives that she might occasionally see” rather than people “she might rely on psychologically to provide for her emotional and physical needs on a day-to-day basis.” The child does not have a secure attachment to her biological parents. Dr. Singer felt “there was too much risk still

associated with the return of the child” to the parents, given their enduring issues with substance abuse and domestic violence.

Crystal and W. also testified. They described their participation in and completion of individual treatment programs, the drug dependency court, and couples counseling. Crystal is currently in Interfaith, a clean and sober house for women, where she is subject to random drug testing. Crystal’s case manager at the Interfaith Shelter Network testified that Crystal has followed through with all of her goals, and is very engaged with her treatment. Crystal characterized her visits with Ashley as affectionate; the child pouts when the visits are over. Both Crystal and W. have not relapsed since August of 2010. They also both developed a realization of the serious impact of domestic violence on the child.

Following the hearing the trial court found that the most secure plan available for Ashley is adoption. The court further found that the parental benefit exception to adoption is not “present in this case,” and selected “adoption as the permanent plan.” The petitions for modification were denied. Over the objection of the mother’s counsel, the court also declined to impose a further obligation on the Department to investigate the parents’ ICWA claim.

DISCUSSION

Crystal and W. argue that the trial court erred by denying their petitions to modify the prior order terminating reunification services under section 388, and by terminating their parental rights and selecting adoption as the permanent plan for Ashley. The parents claim they demonstrated both a change of circumstances and that modification would be in the “best interests” of Ashley, as necessary to obtain modification of the prior order terminating reunification services and setting a selection and implementation hearing. They also assert that the court failed to recognize and find that the beneficial relationship exception to adoption pursuant to section 366.26, subdivision (c)(1)(B)(i), was demonstrated by the evidence adduced in the present case.

I. The Denial of the Section 388 Motions.

Looking first at the denial of the motions for modification, “Section 388 allows a parent or other person with an interest in a dependent child to petition the juvenile court to change, modify, or set aside any previous order. (§ 388, subd. (a).)” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.) “The petitioner requesting the modification has the burden to show a change of circumstances or new evidence, and that the proposed modification is in the child’s best interest.” (*In re Y.M.* (2012) 207 Cal.App.4th 892, 919.) “It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.)

“Furthermore, the petitioner must show *changed*, not changing, circumstances.

[Citation.] The change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order.’

[Citation.]” (*In re Mickel O.*, *supra*, at p. 615.)

“In considering whether the petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case. [Citation.] The court may consider factors such as the seriousness of the reason leading to the child’s removal, the reason the problem was not resolved, the passage of time since the child’s removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner. [Citation.] In assessing the best interests of the child, ‘a primary consideration . . . is the goal of assuring stability and continuity.’ [Citation.]” (*In re Mickel O.*, *supra*, 197 Cal.App.4th 586, 616.)

“We review the juvenile court’s denial of a section 388 petition for an abuse of discretion.” (*In re Mickel O.*, *supra*, 197 Cal.App.4th 586, 616; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) “A review for abuse of discretion must be highly deferential to the decision maker . . . , and requires a showing that the decision was ‘so irrational or arbitrary that no reasonable person could agree with it.’ [Citations.] Under the abuse of discretion standard, ‘ “ ‘When two or more inferences can reasonably be deduced from the facts, the [juvenile] court has no authority to substitute its decision for that of the

[Agency].’ [Citations.]” ’ [Citation.]” (*In re M.L.* (2012) 205 Cal.App.4th 210, 228; see also *In re B.C.* (2012) 205 Cal.App.4th 1306, 1314.)

In our evaluation of the trial court’s decision, we must consider the phase reached in the dependency proceeding when the motions for modification were made. Reunification services had been terminated with agreement of the parents, and the court was seeking to determine a permanent plan for Ashley. “ ‘The requirement of petitioning the court for a hearing pursuant to section 388 to show changed circumstances must be viewed in the context of the dependency proceedings as a whole. [Citation.]’ [Citation.] Once reunification services are terminated, the focus shifts from reunification to the child’s need for permanency and stability, and a section 366.26 hearing to select and implement a permanent plan must be held within 120 days. [Citation.] For a parent ‘to revive the reunification issue,’ the parent must prove that circumstances have changed such that reunification is in the child’s best interest. [Citation.]” (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

Viewed in light of the entire context of the dependency proceeding, we find no abuse of the trial court’s discretion. First, parents failed to demonstrate change of a significant nature that required a setting aside or modification of the challenged prior order. Between February and May of 2011, they made commendable strides in their counseling and therapy programs, but not a *significant* transformation that required a setting aside or modification of the challenged prior order. Further, no alteration of Ashley’s placement situation occurred. She continued to be attached to her caregivers and progressing quite well in their care. More importantly, the court did not abuse its discretion by finding a lack of proof that reunification was in the child’s best interest. By the date of the hearing the paternal aunt and uncle expressed an unwavering interest in adopting Ashley and providing her with a permanent, stable home, while the parents’ circumstances, though improved, were still not entirely resolved. If anything, the positive bond between Ashley and her aunt and uncle was more settled and pronounced by the date of the section 388 hearing. “ ‘While the bond to the caretaker cannot be dispositive . . . , our Supreme Court made it very clear . . . [citation] that the disruption of an existing

psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion.’ ” (*In re D.R.*, *supra*, 193 Cal.App.4th 1494, 1512, quoting from *In re Kimberly F.*, *supra*, 56 Cal.App.4th 519, 531.) Finally, although the parents made affirmative strides in their substance abuse and domestic violence programs, evidence was presented that the serious risk of future domestic violence between them – a major reason for the dependency – had not been removed. (See *In re Alexis W.* (1999) 71 Cal.App.4th 28, 36.)

Under the circumstances, granting the parents’ “section 388 petition would have been inconsistent with the goals of the dependency proceedings. Once a case has advanced to the permanency planning stage, it is important not only to seek an appropriate permanent solution, but also to implement that solution promptly to minimize the time the child is in legal limbo and to allow the child’s caretakers to make a full emotional commitment to the child.” (*In re D.R.*, *supra*, 193 Cal.App.4th 1494, 1513.) The trial court did not err by denying the motions for modification. (*In re Mickel O.*, *supra*, 197 Cal.App.4th 586, 616.)

II. The Selection of the Permanent Plan of Adoption.

The parents also challenge the court’s selection of adoption as the permanent plan for Ashley. They contend that the court erred by failing to find that the “beneficial relationship exception” to adoption under section 366.26, subdivision (c)(1)(B)(i), applies in the present case. The parents claim that their record of “regular visitation” and frequent contact with Ashley throughout the dependency proceeding, along with evidence of a substantial “parent/child relationship” that would benefit the minor, establishes the exception to adoption specified in section 366.26, subdivision (c)(1)(B)(i). They ask us to reverse the termination of their parental rights, and remand the case with directions to the juvenile court to pursue a non-adoptive permanent plan for the Ashley.

Again, our review is dictated by the procedural posture of the dependency proceeding. “ ‘At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . .’ [Citations.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

Where, as here, “reunification efforts have failed and the child is adoptable, the court must select adoption unless it finds terminating parental rights would be detrimental to the child under at least one of five statutory exceptions. (§ 366.26, subd. (c)(1)(A)–(E); see also *In re Erik P.* (2002) 104 Cal.App.4th 395, 401 [127 Cal.Rptr.2d 922]; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [86 Cal.Rptr.2d 739].)” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for permanency and stability. [Citation.] A section 366.26 hearing is designed to protect these children’s compelling rights to have a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. [Citation.] If, as in this case, the children are likely to be adopted, adoption is the norm. Further, the court must terminate parental rights and order adoption, unless one of the specified circumstances in section 366.26, subdivision (c)(1), provides a compelling reason for finding that termination of parental rights would be detrimental to the child. [Citation.] ‘The specified statutory circumstances — actually, *exceptions* to the general rule that the court must choose adoption where possible — “must be considered in view of the legislative preference for adoption when reunification efforts have failed.” [Citation.] At this stage of the dependency proceedings, “it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.” [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.’ [Citation.]” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.)

A single statutory exception is implicated in the present case: “where a *parent* has maintained regular visitation and contact with a child who would benefit from continuing that relationship (§ 366.26, subd. (c)(1)(B)(i))” (*In re A.A., supra*, 167 Cal.App.4th 1292, 1324; see also *In re C.F.* (2011) 193 Cal.App.4th 549, 553; *Sheri T. v. Superior Court* (2008) 166 Cal.App.4th 334, 339–340; *In re S.B.* (2008) 164 Cal.App.4th 289, 297.) “The parent contesting the termination of parental rights bears the burden of showing both regular visitation and contact and the benefit to the child in maintaining the

parent-child relationship.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80–81; see also *In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) The language “ ‘benefit from continuing the . . . relationship’ ” has been interpreted “to mean ‘the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” (*In re S.B., supra*, at p. 297, quoting from *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

To determine if the beneficial parental relationship exception applies, “ ‘the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.]” (*In re S.B., supra*, 164 Cal.App.4th 289, 297.) “[I]f an adoptable child will not suffer great detriment by terminating parental rights, the court must select adoption as the permanency plan.” (*In re Dakota H., supra*, 132 Cal.App.4th 212, 229.) “No one factor controls the court’s analysis. It is a balancing test.” (*Id.* at p. 231.)

The juvenile court’s decision whether the adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—the existence of a beneficial parental or sibling relationship—is, because of its factual nature, properly reviewed for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes “a ‘*compelling reason* for determining that termination would be detrimental’ ” to the child. (*Id.* at p. 1315.) This “ ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,” is appropriately reviewed under the deferential abuse of discretion standard. (*Ibid.*)

We begin by recognizing that the parents maintained regular visitation and a favorable, loving bond with Ashley. The attachment of the child to the parents does not, however, suffice to establish the parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). “A parent must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences.’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated.” (*In re C.F.*, *supra*, 193 Cal.App.4th 549, 555, fn. omitted; see also *In re Dakota H.*, *supra*, 132 Cal.App.4th 212, 229; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007.)

While the issue of the parent-child beneficial relationship exception is not an easy one to resolve in the present case, we cannot disturb the trial court’s resolution of the matter. First, the Department adduced evidence that the bond of Ashley with the parents does not reach the level contemplated by section 366.26, subdivision (c)(1)(B)(i). A parent does not “establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact.” (*In re C.F.*, *supra*, 193 Cal.App.4th 549, 559, distinguishing *In re S.B.*, *supra*, 164 Cal.App.4th 289, 297; see also *In re Jason J.* (2009) 175 Cal.App.4th 922, 937.) “The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ [Citation.] Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) The parents engaged in consistent and

appropriate visitation that illustrated an emotional connection with Ashley, but both the Department's adoption assessment and Dr. Singer's bonding report and testimony indicated that the child does not have a secure attachment to her biological parents. Ashley perceives W. and Crystal as relatives "that she might occasionally see" rather than parents who psychologically provide for her "emotional and physical needs on a day-to-day basis." Dr. Singer also stated that Ashley's enjoyment of visits with her parents is counterbalanced by her fear of potential violence and chaos, and the risk associated with the return to their custody. Substantial evidence supports the finding that respondents do not occupy the parental role in the child's life required by section 366.26, subdivision (c)(1)(B)(i).

Further, the evidence that any benefit derived by Ashley from continuing the relationship would not outweigh the well-being the child would gain in a permanent home is persuasive. Ashley was "likely to be adopted," and she identified positively with her aunt, uncle and cousin as a family. She improved in all phases of her development while in the custody of her parental aunt and uncle. She expressed that she wanted to continue to live with them. Despite Ashley's enjoyable visits with her parents, she continued to experience some stress and anxiety associated with her contact with them. Opinions were uniformly expressed that the incidental benefit of Ashley's continued contact with her parents does not outweigh the considerable benefit she will gain through the permanence of adoption by her aunt and uncle. We find no abuse of discretion in the juvenile court's determination that the beneficial parent-child relationship exception was not established by the evidence, and adoption is the proper permanent plan for a minor. (*In re Dakota H.*, *supra*, 132 Cal.App.4th 212, 231.)

III. The Indian Child Welfare Act.

We turn to the issue of compliance with the ICWA. The parents maintain that once they notified the court of Ashley's "possible Cherokee or Choctaw heritage," the Department "failed to comply with the notice provisions" of the ICWA or give the requisite notice of the child's Indian heritage to the tribes.

The requirements of the ICWA are well delineated. “ ‘[W]here the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.’ (25 U.S.C. § 1912(a).) If the identity of the tribe cannot be determined, notice must be given to the Bureau of Indian Affairs.” (*In re Robert A.* (2007) 147 Cal.App.4th 982, 988; see also *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1300–1301.)

“To satisfy the notice provisions of the [ICWA] and to provide a proper record for the juvenile court and appellate courts, [a social services agency] should follow a two-step procedure. First, it should identify any possible tribal affiliations and send proper notice to those entities, return receipt requested. [(Cal. Rules of Court, rule 5.664 [formerly rule 1439(f)], rule 5.664 repealed effective Jan. 1, 2008.)] Second, [the agency] should provide to the juvenile court a copy of the notice sent and the return receipt, as well as any correspondence received from the Indian entity relevant to the minor’s status. If the identity or location of the tribe cannot be determined, the same procedure should be used with respect to the notice to [the Bureau of Indian Affairs].” (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739–740, fn. 4; see also *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 702–703; *People ex rel. DSS in Interest of C.H.* (S.D. 1993) 510 N.W.2d 119, 123–124.)²

“ ‘The Indian status of the child need not be certain to invoke the notice requirement. [Citation.] Because the question of membership rests with each Indian tribe, when the juvenile court knows or has reason to believe the child may be an Indian child, notice must be given to the particular tribe in question or the Secretary [of the Interior].’ [Citation.]” (*In re O.K.* (2003) 106 Cal.App.4th 152, 156.) “The showing required to trigger the statutory notice provisions is minimal; it is less than the showing needed to establish a child is an Indian child within the meaning of ICWA.” (*In re*

² Rule 1439 was renumbered, as pertinent here was rule 5.664. Rule 5.664 was then repealed effective January 1, 2008, and in substance is currently rule 5.481.

Miguel E. (2004) 120 Cal.App.4th 521, 549; see also *In re Merrick V.* (2004) 122 Cal.App.4th 235, 246.)

“Because ‘ “failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, [ICWA] notice requirements are strictly construed.” ’ [Citation.]” (*In re Robert A., supra*, 147 Cal.App.4th 982, 989.) “The determination of a child’s Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.” (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) “The circumstances under which a juvenile court has reason to believe that a child is an Indian child include, but are not limited to, the following: ‘(i) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child. [¶] (ii) Any public or state-licensed agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child. [¶] (iii) The child who is the subject of the proceeding gives the court reason to believe he or she is an Indian child. [¶] (iv) The residence or the domicile of the child, his or her biological parents, or the Indian custodian is known by the court to be or is shown to be a predominantly Indian community. [¶] (v) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.’ (Guidelines for State Courts; Indian Child Custody Proceedings (44 Fed.Reg. 67584, 67586 (Nov. 26, 1979)) (Guidelines); [former] rule 1439(d)(2).)” (*In re O.K., supra*, 106 Cal.App.4th 152, 156.)

Here, both parents advised the Department and the court of suspected Indian ancestry with the Cherokee and Choctaw tribes. The parents provided some information, although concededly not definitive, about Native American heritage through specified relatives, associated with identified tribes: W. claimed Cherokee ancestry on his “father’s side” through a relative named “Frank Bond,” while Crystal stated that her father was Cherokee and Choctaw. The low threshold of evidence “suggesting” the minor “may” be an Indian was offered, and triggered the duty of inquiry under the ICWA. (*In re J.D.* (2010) 189 Cal.App.4th 118, 124; *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1198; *In*

re Merrick V., supra, 122 Cal.App.4th 235, 246; *In re Jennifer A., supra*, 103 Cal.App.4th 692, 702–703; *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 258.) The court so advised the Department by ordering an investigation.

The Department thereafter conducted an inquiry, but it was inadequate. The Department contacted Ashley’s paternal aunt Teresa, as Walter suggested, but she was unable to obtain accurate information or a “correct name” for a paternal great-grandmother who may have been enrolled in a tribe. The Department took no further action, and requested a finding that the ICWA “does not apply given that no new information related to tribal affiliation has been provided by the parents or extended family members.” The juvenile court agreed.

The Department was required to undertake a further inquiry. “Section 224.3, subdivision (a) places an ‘affirmative and continuing duty’ on the court and the Department to ‘inquire whether a child . . . is or may be an Indian child’ If the court or the Department ‘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 . . . , contacting the Bureau of Indian Affairs . . . [,] the tribes and any other person that reasonably can be expected to have information regarding the child’s membership status or eligibility.’ (§ 224.3, subd. (c); see Cal. Rules of Court, rule 5.481(a)(4).)” (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) Despite the objections of counsel for respondents and the identification of Crystal’s grandfather as a source of information on Ashley’s Indian ancestry, the Department did not interview extended family members, contact the Bureau of Indian Affairs, or most importantly send notice to the two identified tribes to determine the child’s membership status or eligibility. We conclude that the juvenile court thus failed to effectuate compliance with ICWA requirements. (*In re Gabriel G., supra*, at pp. 1168–1169; *In re Damian C.* (2009) 178 Cal.App.4th 192, 199–200.)

The remaining issue is the appropriate disposition in light of the error. We point out that reversal of a judgment selecting adoption as the permanent plan for the child on

the ground of lack of compliance with the ICWA is antithetical to the “ ‘strong policy in dependency cases that they “be resolved expeditiously,” ’ ” and the fundamental objective of California’s dependency system to provide the child with stability and permanency in the least protracted fashion the law permits. (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1401; *In re I.G.* (2005) 133 Cal.App.4th 1246, 1255.) We are nevertheless compelled to reverse the judgment, but only conditionally. We must remand the matter to the juvenile court to direct the Department to make adequate inquiry and send ICWA-compliant notice to all relevant tribes, but if on remand no tribe intervenes and the child is not found to be an Indian child, the judgment will be reinstated. (*In re Gabriel G., supra*, 206 Cal.App.4th 1160, 1168; *In re A.G., supra*, at p. 1402.)

DISPOSITION

The judgment terminating parental rights and selecting adoption of Ashley as a permanent plan is conditionally reversed. The juvenile court is directed to order the Department to promptly investigate and obtain complete and accurate information about paternal relatives and to provide ICWA notices to the relevant tribes. If a tribe intervenes after receiving proper notice, the court shall proceed in accordance with ICWA. If, after receiving proper notice, no tribe indicates Ashley is an Indian child within the meaning of the ICWA, the juvenile court is ordered to reinstate the judgment.

Dondero, J.

We concur:

Marchiano, P. J.

Banke, J.