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

In re A.H., a Person Coming Under the Juvenile
Court Law.

MENDOCINO COUNTY HEALTH &
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Alicia E.,

Defendant and Appellant.

A134387

(Mendocino County Super. Ct. No.
SCUK-JVSQ-11-16333-01)

This appeal has been taken by Alicia, the mother of the minor A.H., from an order following a dispositional hearing that declared A.H. a dependent child, removed her from the parents' custody and placed her with respondent Mendocino County Health and Human Services Agency (respondent or the Agency) in foster care, with reunification services granted to the parents.¹ The mother argues that the juvenile court and the Agency failed to give proper notice in the case as required by the Indian Child Welfare Act (ICWA). She also claims that under the ICWA and corresponding California law the trial court erred by failing to transfer the proceeding to a tribal court, and the Agency erred by failing to adhere to specified statutory placement preferences. We find that no

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated; all references to rules are to the California Rules of Court. For the sake of confidentiality, we will refer to the minor, her parents, and other relatives by their first names or initials only.

prejudicial error is associated with the ICWA notice sent by the Agency. We further find that the trial court was prohibited from transferring the case to a tribal court, and no violation of placement preferences occurred. We therefore affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The minor was 12 months old when the present dependency proceeding commenced on September 15, 2011, with a petition filed pursuant to section 300, subdivision (b), that alleged the mother's continuing, unresolved substance abuse, her violation of probation, the father's failure to protect the minor, incidents of domestic violence between the parents and recent arrest of the mother for battery, and the extreme unsanitary and unsafe condition of the home. The home of the maternal grandparents, Roy and Linda, who were then the minor's temporary legal guardians as designated in a separate guardianship proceeding, was also alleged to be a health and safety hazard to the minor.

At the initial detention hearing on September 20, 2011, the parents reported that the minor had Indian ancestry. The father, Patrick, informed the court that he was registered with the Round Valley Indian Tribes (Round Valley Tribes), and the minor was "enrolled" in the tribe. The maternal grandmother indicated that she was "1/16th" Karuk tribe, and "there's a possibility" the maternal grandfather may have Indian heritage. The mother, who was in a residential drug treatment program, specified that she may have Indian ancestry, but did not name a tribe. The court ordered removal of the minor from current placement with the guardians, entered a temporary detention order, and suspended the guardianship proceeding.

The following day at the continued detention hearing the parents, maternal grandparents, along with their attorneys and counsel for the minor, and the Round Valley Tribes representative Yolanda Hoaglin appeared. The parties submitted the matter on the allegations in the petition, and requested foster placement with the maternal grandparents. Hoaglin expressed support for return of the child to the guardians "once they get their place cleaned up." The court found "a prima facie case" to support the allegations of the petition, and continued the prior temporary detention order.

On October 11, 2011, pursuant to the provisions of the ICWA, respondent sent an ICWA-030 notice of the dependency proceeding to the Round Valley Tribes, the Sacramento Director of the Bureau of Indian Affairs, and the Secretary of the Interior.² The Round Valley Tribes responded that A.H. was “a member of the tribe,” and therefore the ICWA applied. The Round Valley Tribes also issued a resolution under the authority of the ICWA that specified the first order of placement preference for A.H. was with Tom and Rachael C., whose home “meets the tribes prevailing social and cultural standards which is in the best interests of this Indian child.”

The jurisdictional report filed by the Agency on October 17, 2011, reaffirmed that the mother suffered from unrelenting substance abuse and admitted “mental health problems.” She was in violation of probation on drug charges. Investigation of the parents’ residence revealed that it was unsanitary in the extreme and unsafe for the child. The parents continued to engage in acts of domestic violence. The maternal grandparents home was also considered unsuitable for her as a placement. Following a jurisdictional hearing the court sustained the petition, with amendments to reflect: an additional allegation that the mother’s mental health condition interferes with her ability to care for the child; and, termination of the child’s guardianship with the maternal grandparents and dismissal of the allegation related to them.

On November 21, 2011, an ICWA-030 notice of the proceeding was sent to the Karuk Indian Tribes, the Round Valley Tribes, the Elk Valley Rancheria, the Quartz Valley Indian Reservation, the Secretary of the Interior, the Bureau of Indian Affairs, and the parents.

At a scheduled disposition hearing on December 8, 2011, the mother requested substitution of counsel. The court paused the hearing to conduct a *Marsden* inquiry,³ at which the mother claimed that her “defense [had] not been properly handled,” and

² The jurisdictional report noted that the Karuk tribe had not yet received notice of the proceeding.

³ *People v. Marsden* (1970) 2 Cal.3d 118.

counsel failed to properly communicate with her. The court found that counsel performed competently, and denied the motion.

When the disposition hearing resumed the mother requested a transfer of the entire matter “to tribal court.” The court advised the mother that the Round Valley Tribes did not have a tribal court, and denied the request.⁴ The mother then made an additional request for transfer to the “Indian custodian,” the minor’s paternal aunt and uncle Francine and Carlos. The court responded that the “placement issue” with an “Indian custodian” would be addressed in the forthcoming disposition report to be filed before the continued disposition hearing.

The Agency filed the disposition report on December 12, 2011. Reunification services were recommended for both parents. The mother was referred to the Yuki Trails substance abuse treatment program, Project Sanctuary, mental health counseling, and domestic violence counseling. She was also directed to participate in an Empowerment Plan, and parenting classes. The father completed a Fatherhood parenting class through the Round Valley Tribe, and was provided with anger management and parenting classes. The minor continued her foster placement as approved by the Round Valley Tribe with Tom and Rachael C., who expressed willingness to continue to care for her and “adopt her if necessary.” The report noted that the parents visited the minor regularly, with the visits “going well.”

A contested disposition hearing was held on December 21, 2011. The Agency presented a declaration and expert testimony from Reuben Becerra, a council member with the Round Valley Tribe. Becerra reviewed the petitions and reports filed in the case, and was personally familiar with the family. He offered an expert opinion, which was shared by the tribe, based on his knowledge of Indian culture and review of the case, that custody of the minor by her parents was likely to result in serious emotional and physical damage to her. He added that the child’s best interests would be served by continuing her placement in the “Indian home” of Rachael and Tom C. while the parents participated in

⁴ The court noted that any motions by the Round Valley Tribe for a transfer of jurisdiction would be considered.

reunification services. Becerra added that he was aware of the parents' request for placement with the father's brother, but nevertheless concluded that the current foster placement was in the child's best interests until resolution of the "reunification issue."

At the conclusion of the disposition hearing the court found that the requisite notice under the ICWA had been provided. The Agency also properly consulted with the Round Valley Tribe "concerning the appropriate placement of the child," and adhered to both the case plan and the placement preferences mandated by the ICWA.⁵ The court found that custody with the parents is likely to result in substantial danger to the physical health, safety, or emotional well-being of the child. Custody of the child was removed from the parents and placed with the Agency, and the case was transferred for family reunification services. Continued visitation was granted to the parents.

This appeal by the mother followed. She challenges the trial court's compliance with the provisions of the ICWA.

DISCUSSION

I. The Agency's Compliance with the Notice Requirements of the ICWA.

First, Alicia complains that the court failed to comply with the notice requirements of the ICWA. Her claim is that the notices sent by the Agency provided "incomplete information" about the Indian ancestry of the child's maternal great-grandparents and the "parentage" of the father.

Based on definitive information received from Patrick, notice of the child's enrollment in the Round Valley Tribe was provided. Alicia declared that she "may" have Indian ancestry, but did not identify a tribal affiliation. The ICWA-030 disposition hearing notices sent by the Agency identified the child's parents and maternal grandparents, stated the father's Round Valley Tribe ancestry, and specified an affiliation with the Karuk Tribe, the Elk Valley Rancheria, and the Quartz Valley Indian Reservation for the mother and maternal grandmother. No other tribal information was

⁵ The Karuk Indian Tribes, the Elk Valley Rancheria, and the Quartz Valley Indian Reservation did not respond in the proceeding, and given the participation by the Round Valley Tribes the court determined that no further notice to those tribes would be provided.

mentioned in the notices, for the reason stated by the social worker that he was “unable to reach anyone for more information.” Alicia maintains that the notices “omitted the known information about the minor’s parentage,” and as a result the “tribes did not have a meaningful opportunity to search the tribal registry.” She asks that we remand the case “to ensure substantial compliance with the ICWA.”

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.)⁶

“ ‘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

⁶ 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.

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 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.) “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.) Although substantial compliance with the notice requirements of ICWA may be sufficient under certain circumstances, the failure to provide the necessary notice requires this court to invalidate actions taken in violation of the ICWA and remand the case unless the tribe has participated in or expressly indicated no interest in the proceedings. (*In re I.G.* (2005) 133 Cal.App.4th 1246, 1252; *In re Christopher I.* (2003) 106 Cal.App.4th 533, 565.)

We disagree with the mother’s contention that the notices were prejudicially inadequate. The notices sent to the tribes, the Secretary of the Interior and the Bureau of Indian Affairs included considerable information on the child’s Indian ancestry: the

names and tribal affiliations of the mother, father, and maternal grandparents. Missing from the notices were the names of the great-grandparents.

We recognize that “ICWA notice must include the following information, *if known*: the name of the child; the child’s birth date and birthplace; the name of the tribe in which the child is enrolled or may be eligible for enrollment; names of the child’s mother, father, grandparents and *great grandparents* or Indian custodians, including maiden, married and former names or aliases, as well as their birth dates, places of birth and death, tribal enrollment numbers, and current and former addresses; and a copy of the petition. (25 C.F.R. § 23.11(a) & (d) (2003); 25 U.S.C. § 1952.)” (*In re D. T.* (2003) 113 Cal.App.4th 1449, 1454, italics added.) The identities of the great-grandparents apparently were not known to the social worker, but may have been readily discoverable upon consultation with the father and maternal grandparents – who were participants in the proceeding. Even if the names and identities of the great-grandparents should have been discovered and revealed in the notices, we find no error that requires reversal. “The object of tribal notice is to enable a review of tribal records to ascertain a child’s status under the ICWA. [Citations.] Notice requirements are strictly construed and notices ‘must contain enough information to be meaningful. [Citation.]’ [Citations.] Our role is to assess prejudice from any error.” (*In re Z.N.* (2009) 181 Cal.App.4th 282, 302.) Even without reference to the great-grandparents, the information supplied in the notices was adequate to provide the tribes with the requisite knowledge to consult records and determine affiliation.

Moreover, A.H. was considered an Indian child and a member of the Round Valley Tribes nearly from the inception of the proceeding, and the court found that the ICWA applied. Notices were properly sent to the Karuk Tribe, the Elk Valley Rancheria, and the Quartz Valley Indian Reservation pursuant to information received from the mother and maternal grandmother, but those tribes did not respond. The Round Valley Tribes were designated as the Indian affiliation for A.H., as she was enrolled in that tribe by her father. The child’s more significant contacts with the Round Valley Tribes meant that she was properly determined by the court to be a member of that tribe alone for

purposes of the Indian child custody proceeding. (§ 224.1, subd. (e).)⁷ Thus, her Indian child status was not adversely affected by lack of reference to the great-grandparents in the ICWA notices. Any error in ICWA notice was harmless. (*In re Z.N.*, *supra*, 181 Cal.App.4th 282, 302.)

II. The Denial of the Mother's Request to Transfer Jurisdiction to the Round Valley Tribes.

Alicia also argues that the juvenile court “committed jurisdictional error” by denying her request to transfer jurisdiction of the dependency proceeding to “the Round Valley Tribes’ tribal courts” without holding an evidentiary hearing. She asserts that the court thus “violated the tribal court’s presumptive jurisdiction over custody proceedings involving Indian children.”

⁷ Section 224.1, subdivision (e), reads: “(e) If an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe, the court shall make a determination, in writing together with the reasons for it, as to which tribe is the Indian child’s tribe for purposes of the Indian child custody proceeding. The court shall make that determination as follows:

“(1) If the Indian child is or becomes a member of only one tribe, that tribe shall be designated as the Indian child’s tribe, even though the child is eligible for membership in another tribe.

“(2) If an Indian child is or becomes a member of more than one tribe, or is not a member of any tribe but is eligible for membership in more than one tribe, the tribe with which the child has the more significant contacts shall be designated as the Indian child’s tribe. In determining which tribe the child has the more significant contacts with, the court shall consider, among other things, the following factors:

“(A) The length of residence on or near the reservation of each tribe and frequency of contact with each tribe.

“(B) The child’s participation in activities of each tribe.

“(C) The child’s fluency in the language of each tribe.

“(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

“(E) Residence on or near one of the tribes’ reservations by the child[’s] parents, Indian custodian or extended family members.

“(F) Tribal membership of custodial parent or Indian custodian.

“(G) Interest asserted by each tribe in response to the notice specified in Section 224.2.

“(H) The child’s self-identification.

“(3) If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child’s tribe under paragraph (2), actions taken based on the court’s determination prior to the child’s becoming a tribal member continue to be valid.”

At the commencement of the disposition hearing Alicia requested a transfer of the dependency “to tribal court.” The court declined to transfer the case for the announced reason that the Round Valley Tribes did not have a tribal court, but agreed to entertain renewal of the request if the tribe sought jurisdiction of the case.

Upon respondent’s motion we have taken judicial notice of records that reveal the trial court subsequently entertained the mother’s renewed transfer request. Evidence was presented to the juvenile court, in the form of a letter from the Round Valley Tribal Council President, that on June 19, 2012, the Round Valley Tribal Council voted to decline jurisdiction of the case and directed “that the matter would remain under the Mendocino Court system.” Upon consideration of the letter, the court denied the mother’s motion to transfer the case to tribal jurisdiction.

The Round Valley Tribal Council’s refusal to accept jurisdiction of the dependency case ultimately defeats Alicia’s claim of error, despite the rule that in any state court proceeding for foster care or termination of parental rights to an Indian child who is not domiciled or residing within the reservation of his or her tribe, the state court, in the absence of good cause to the contrary, is required to transfer the proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child’s tribe. (25 U.S.C. § 1911(b); § 305.5, subd. (b); *In re Jack C.* (2011) 192 Cal.App.4th 967, 982.) Transfer of jurisdiction to the tribe is subject to declination, and the juvenile court is required to “find good cause to deny the petition” for transfer if the child’s tribe does not have a tribal court or the “tribal court of the child’s tribe declines the transfer.” (§ 305.5, subd. (c)(1)(C); see also rule 5.483(d)(1)(C); *In re Jack C.*, *supra*, at pp. 982–983.) With the Round Valley Tribal Council’s refusal to accept the transfer, this court must find good cause not to relinquish jurisdiction of the case. We cannot grant the mother any effectual relief, and therefore dismiss the claim as moot. (*Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 925; *Vernon v. State of California* (2004) 116 Cal.App.4th 114, 120–121; *In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

III. The Agency's Compliance with ICWA Placement Preferences.

The mother's final contention is that the Agency failed to follow designated relative placement preferences mandated by the ICWA. Specifically, she maintains that the Agency "did not take any steps to evaluate and facilitate relative placement with the Indian paternal uncle and aunt, who were a preferential placement option under both the ICWA and state law, and had to be considered first before the foster placement." She requests that we reverse the judgment and order a "remand for a determination on relative preferential placement with the paternal uncle and aunt."

"California's placement-preference law for Indian children is contained in section 361.31. In large part, it restates the ICWA provision in 25 United States Code section 1915 which mandates that preference in any adoptive placement of an Indian child be given, in the absence of good cause to the contrary, a placement with (1) a member of the child's extended family; (2) other members of the child's tribe; and (3) other Indian families. (25 U.S.C. § 1915(a); see Welf. & Inst. Code, § 361.31, subds. (c), (h).) Also, the standards to be applied in meeting the placement preferences shall be the prevailing social and cultural standards of the Indian community where the parent or extended family resides or with which they maintain social and cultural ties. (25 U.S.C. § 1915(d); Welf. & Inst. Code, § 361.31, subd. (f).)" (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1326–1327, fn. omitted.) Absent good cause to the contrary, "the court *shall* give preference to placement with a member of the child's extended family." (*In re Anthony T.* (2012) 208 Cal.App.4th 1019, 1029.)⁸ However, "Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe, so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b)." (§ 361.31, subd. (d).)

⁸ The party opposing the placement has the burden to show there is good cause not to follow the stated preferences. (§ 361.31, subd. (j); BIA Guidelines, 44 Fed.Reg. 67584, 67594–67595, § F.1, 3 (Nov. 26, 1979).)

Here, the Round Valley Tribal Council altered the placement preferences for A.H. by two formal resolutions: the first, on October 11, 2011, specified a placement preference for A.H. with Tom and Rachael C., and opposed adoption; the second, on June 19, 2012, which we have judicially noticed, approved a long-term guardianship for A.H. with Talisha and Simon M., with the understanding that no adoption would occur. Both resolutions noted the authority of the tribe under the ICWA and California law to alter placement preferences. Alicia has failed to demonstrate that the placement preferences designated by the Round Valley Tribal Council are not in the child's best interests. Under section 361.31, subdivision (d), the Agency and the court were therefore required to adhere to the tribe's stated placement preferences. (See also rule 5.484(b).) No error was committed.

Accordingly, the judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.