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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Petitioner and Respondent,

v.

A.G.,

Defendant and Appellant.

A137605, A138150

(Alameda County
Super. Ct. No. HJ0801940)

Father appeals the denial of a petition to modify an order terminating his parental rights filed after this court issued a limited reversal and remanded so the juvenile court could require compliance with the Indian Child Welfare Act (ICWA). (See *In re A.G.* (2012) 204 Cal.App.4th 1390 (A.G.)). Father contends the juvenile court was incorrect when it ruled that our disposition in *A.G.* precluded it from exercising jurisdiction over his modification petition. We agree with the juvenile court that our remand was for the limited purpose of complying with ICWA and affirm.

BACKGROUND

The history of this case is set out in our two prior opinions (*A.G.*, *supra*, 204 Cal.App.4th 1390; *In re A.G.* (April 13, 2011, A130942 [nonpub. opn.])), and we incorporate it here by reference. In 2012, we conditionally reversed the juvenile court's

order terminating Father’s parental rights as to A.G. on the sole ground that the Alameda County Social Services Agency (the Agency) failed to comply with ICWA’s inquiry and notice requirements. (*A.G.*, *supra*, 204 Cal.App.4th at pp. 1393–1394.) We issued a limited reversal and remanded the case to the juvenile court with directions that it order the Agency to investigate and obtain complete and accurate information about Father’s relatives, and to provide corrected ICWA notices to the relevant tribes. Our disposition further directed that “[i]f a tribe intervenes after receiving proper notice, the court shall proceed in accordance with ICWA. If no tribes intervene after receiving proper notice, the order terminating Father’s parental rights shall be reinstated.” (*Id.* at p. 1402.)

On remand, the juvenile court commenced the ICWA compliance proceedings directed by this court. Since then, Father has filed four modification petitions under Welfare and Institutions Code section 388.¹ This appeal concerns only the most recent one of these, in which Father sought visitation and correspondence with A.G.² As changed circumstances warranting modification, Father cited the conditional reversal of the order terminating parental rights, a letter from A.G. that expressed love for his father, and a social worker’s report that “[A.G.] grieved the loss of his parents.”

The juvenile court ruled that it lacked jurisdiction to consider the petition in light of the limited scope of the remand from this court and denied it on that basis. Father timely appealed.

DISCUSSION

Father contends the juvenile court wrongly concluded the section 388 petition to modify was beyond its circumscribed jurisdiction on remand. His contention is meritless.

In re Terrance B. (2006) 144 Cal.App.4th 965 (*Terrance B.*) is dispositive. In *Terrance B.*, as in this case, the appellate court issued a limited reversal of an order

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

² We consolidated Father’s appeal from the denial of one of his earlier modification petitions with this appeal, but his opening brief addresses only his request for visitation. Father has therefore forfeited appellate review of the earlier order. (*In re Daniel M.* (2003) 110 Cal.App.4th 703, 707, fn. 4.)

terminating parental rights for failure to comply with ICWA’s notice provisions and remanded the case to require compliance with ICWA. The disposition provided that “ ‘[i]f, after proper inquiry and notice, a tribe claims Terrance is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Terrance is an Indian child, the judgment terminating parental rights shall be reinstated.’ ” (*Id.* at p. 970.) Following the remittitur, Terrance’s mother filed a section 388 petition asking the juvenile court to reverse its order terminating parental rights and to place Terrance with her. The court summarily denied the petition as beyond its limited jurisdiction. (*Ibid.*) The appellate court affirmed. It explained:

“The appellate court’s order for a retrial on a limited issue, contained in its remittitur, ‘revests the jurisdiction of the subject matter in the lower court and defines the scope of the lower court’s jurisdiction. “The order of the appellate court as stated in the remittitur[] ‘is decisive of the character of the judgment to which the appellant is entitled. The lower court cannot reopen the case on the facts, allow the filing of amended or supplemental pleadings, nor retry the case, and if it should do so, the judgment rendered thereon would be void.’ [Citation.]” [Citations.]’ [Citation.] Thus, when a judgment is reversed on appeal with directions to the trial court to enter a specific judgment, that reversal ‘. . . “determines the merits of the cause just as effectively as though the judgment were affirmed on appeal.” ’[Citation.]” (*Terrance B.*, *supra*, 144 Cal.App.4th at pp. 971–972.)

This limited reversal approach, as *Terrance B.* observes, “is well adapted to dependency cases involving termination of parental rights in which we find the only error is defective ICWA notice. This approach allows the juvenile court to regain jurisdiction over the dependent child and determine the one remaining issue. The parties already have litigated all other issues at the section 366.26 hearing, and it is not necessary to have a complete retrial. Thus, the child is afforded the protection of the juvenile court, and, at the same time, his or her case is processed to cure the ICWA error. . . .’ [Citation.] In this regard the practice of limited reversals in defective notice ICWA appeals ‘promotes the

child's best interests and the public policy of this state—namely, that when reunification is not feasible, a permanent home should be found for the child in the most expeditious manner possible under the law. If the only error requiring reversal of the judgment terminating parental rights is defective ICWA notice and it is ultimately determined on remand that the child is not an Indian child, the matter ordinarily should end at that point, allowing the child to achieve stability and permanency in the least protracted fashion the law permits.’ ” (*Terrance B.*, *supra*, 144 Cal.App.4th at p. 972.)

Father argues this case is different because, after remand and proper ICWA notice, the Cherokee Nation identified A.G. as an Indian child. Relying on *In re K.B.* (2009) 173 Cal.App.4th 1275 and *In re Francisco W.* (2006) 139 Cal.App.4th 695, he maintains that the Cherokee Nation's response automatically vested the juvenile court with full subject matter jurisdiction because it identified A.G. as an Indian child. But Father's factual premise is faulty. The Cherokee Nation responded that “the Indian Child Welfare Program has examined the tribal records and the above named child/children can *possibly* be traced in our tribal records based on the extended family member/s you provided and are highlighted above. The relationship makes the above listed child/children eligible for enrollment and affiliation with [the] Cherokee Nation by having direct lineage to an enrolled member.” While the response indicates that A.G. *might* be eligible for enrollment, it does not establish that he is an Indian child within the meaning of ICWA. (See 25 U.S.C. § 1903(4) [Indian child is an unmarried person under 18 who is either a member of an Indian tribe or eligible for membership and the biological child of a member of an Indian tribe].)

In any event, our unambiguous disposition in *A.G.* expressly limited the juvenile court's jurisdiction on remand to addressing the notice issues and reinstating the prior section 366.26 order unless a properly noticed tribe were to intervene. Contrary to Father's claims, such dispositions are prevalent among the courts of appeal in this state and are “legally authorized, consistent with the best interests of children, and in keeping with fundamental principles of appellate practice.” (*In re Francisco W.*, *supra*, 139

Cal.App.4th at pp. 704–705.) Accordingly, Father’s modification petition exceeded the juvenile court’s limited jurisdiction on remand and was therefore correctly denied.³

DISPOSITION

The order of the juvenile court is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.

³ We deny the requests by Father and the Agency to augment the record on appeal with documents bearing on A.G.’s potential tribal eligibility and filed in the juvenile court after the denial of Father’s section 388 petition pursuant to *In re Zeth* (2003) 31 Cal.4th 396, 405, 413–414.