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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

CONTRA COSTA COUNTY CHILDREN
& FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

J.C. et al.,

Defendants and Appellants.

A138876

(Contra Costa County
Super. Ct. No. J1300347)

INTRODUCTION

Stephanie W. (mother) and Jack C., (father) the parents of minor G.C., appeal from the juvenile court's order removing the minor from their custody. Mother contends the court's jurisdictional finding as to her must be reversed because there is insufficient evidence that her mental illness placed the minor at substantial risk of harm. (Welf. & Inst. Code, § 300, subd. (b).)¹ She argues the disposition order removing the minor from her custody suffers from the same lack of evidence. Father argues the court erred by ordering him to complete 52 weeks of an anger management program as part of his reunification plan, when reunification services were ordered for six months only. Both

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

parents challenge the juvenile court's reduction of visitation from once a week to twice a month, as well as the Bureau's failure to comply with the notice requirements imposed by the Indian Child Welfare Act (ICWA). We remand with directions to the juvenile court to direct Contra Costa County's Children and Family Services Bureau (Bureau) to provide proper notice under ICWA; in all other respects, we affirm the court's jurisdiction and disposition orders.

STATEMENT OF THE CASE AND FACTS

I. Detention

G.C. was born March 17, 2013. G.C. is mother's first child. G.C. was detained following a hearing on March 22, 2013. Weekly supervised visitation of one hour with both parents was ordered.

On March 26, 2013, a petition was filed under section 300, subdivision (b) alleging that "there is a substantial risk that the child will suffer serious physical harm or illness because mother is unable to adequately supervise or protect the child due to the mother's untreated mental illness." The petition was amended to include the allegation of a substantial risk of harm to G.C. as a result of father's anger management and substance abuse problems.

On April 16, 2013, father waived his right to a jurisdictional hearing and pleaded no contest to the allegation of the amended petition as modified above.

II. Facts Underlying the Anger Management Allegation Admitted by Father

On March 19, medical social worker Dominguez went to mother's hospital room to ask father to meet privately with her. He was disheveled, angry, loud, and smelled of alcohol. He yelled at her, "I'm tired of being woken up. I'm having to meet with people every 15 minutes." When asked if he had been drinking, he yelled, "I had a few drinks last night and it's none of your business." He added: "I don't need to be woken up for this. . . . I'm not talking to you. You're going to write things down like a third grade teacher and then stuff a microscope up my ass." He stormed out of the social worker's

office; the social worker called security, but father left the hospital before security arrived. Hospital staff was informed not to allow him back in.

When interviewed by Bureau social worker Julie Lutz, mother said father had a child from a previous relationship he could not raise because he had accidentally given his ex-wife a black eye while protecting himself, and he was arrested for that. She admitted she and father engaged in pushing, shoving and grabbing, but he never bruised her. He gets angry and rants and raves, and the police had been out to his home a few times, but no one had been arrested. She was a little concerned about father being around the baby because he gets angry and yells a lot.

Social worker's interview of mother on March 19 apparently ended when father returned to the room in a highly agitated state. Informed by the social worker of the upcoming detention hearing, he pointed at her face and said "this is all your fault" in a threatening manner. He said he would be back with some friends. He yelled and stormed around the room until two sheriff's deputies arrived and escorted him out of the room.

Father had a prior child welfare history from 2000 concerning the four-year-old son of a prior girlfriend. There were substantiated allegations of physical abuse to the child caused by father spanking the boy hard enough to leave bruises, and of general neglect by the mother for failing to protect the child from physical abuse by him. The child also witnessed incidents of domestic violence between his mother and father.

III. Contested Jurisdiction Hearing on April 16, 2013

Bureau social worker Lutz testified G.C. was born at full-term and had no medical issues. Mother's prenatal care doctor alerted medical social worker Dominguez about concerns that mother might be schizophrenic but refused help.

Mother acted strangely shortly after the birth. She called 911 to report that she believed a tubal ligation had been performed on her without her knowledge or consent because "someone was down there too long." The next day, she left her room holding the baby, anxiously asking if anyone had heard from father, who had stepped out for a while.

She said she needed to call the police to make sure he was okay. Father returned, talking loudly and smelling of alcohol, stayed in the room for a while and then left again.

Mother ran out of the room to look for him in the lobby, leaving the baby alone in the room. She was told she could not leave the baby alone.

Mother also expressed odd thoughts after the birth. She thought her baby hurt if she hurt.²

According to social worker Lutz, Dr. Porat opined that, due to mother's mental illness, she was very likely to have trouble providing safe and stable care for her baby.

Lutz never saw mother interact with the baby because the baby was removed from mother's room before the social worker arrived at the hospital.

Mother was interviewed in her room by social worker Lutz and a deputy sheriff. Mother said she is not married to father, nor do they live together, although she sometimes "crashe[s]" at his place. She said she is homeless, but intended to take the baby to Winter Nights, a shelter which provided a place to sleep at night and an indoor place to stay during the day. She had plenty of baby clothes she had obtained from community programs. She had secured nutrition vouchers for the baby through Women, Infant, and Children (WIC) services and food stamps. She also had a pending appeal with the Social Security Department and expected to receive Social Security benefits in the near future. Mother graduated from Carondelet High School and attended California State University at Hayward. Mother was very knowledgeable about resources that were available to her, and very intelligent and articulate. She had a plan to take care of her baby after discharge from the hospital, but the way mother communicated the plan made it difficult for the social worker to follow.

² On mother's attorney's motion, the court excluded parts of the detention/jurisdiction report concerning what Tina Voss, registered nurse (RN), and Dr. Porat, clinical psychologist, told the social worker. However, the court allowed the social worker to testify about the basis of her opinion, including what Voss, Porat, and medical social worker Dominguez told her.

Mother confirmed she had a diagnosis of psychosis NOS (not otherwise specified). She said it was a special type of psychosis that no one else had been diagnosed with. She knows she is “a little paranoid.” She also confirmed she had been hospitalized because of her mental health issues (“5150’d”) twice, and explained the statutory procedures for holding patients after the initial hold lapses. Mother explained she refused to take medication when she was hospitalized because she thinks it should be a “last option” and she did not want to be a “lab rat.” She believed she was illegally drugged while detained for her mental health issues but could not prove it because she is poor and cannot afford an attorney. She said she was “5150’d” because a realtor lied that she had thrown a bag of metal at him, and that two police officers also lied in their police reports, which they would not release to her. The social worker found mother’s narrative hard to follow.

Mother also said her psychosis started in 2007 when her Facebook account was hacked; she would send private messages to friends, but others would post responses. By 2008, her paranoia had spread to government agencies. She knows the government pays hospitals to perform tubal ligations on welfare recipients.

Lutz testified that, based on her conversations with the medical social worker, the nurse, the clinical psychologist, and on her own conversation with and observations of mother, she was concerned that mother did not have a good grasp of reality.

Social worker Lutz and mother did not communicate effectively. It was not a two-way conversation. Lutz reported: “I was being spoken at a lot of the time. . . . [S]he didn’t hear my concerns” When the social worker said she was concerned about mother’s mental health and her level of functioning, mother told her about the resources she had in place for the baby.

Mother told the social worker she had been advised to take medication, but she had refused. The social worker was of the opinion that the baby was at risk because mother “was not able to stay grounded in our conversation.” The hospital nurse’s observation of mother leaving the baby in the room alone while she went to look for

father reinforced the social worker's opinion that mother "needed him to kind of calm her or kind of ground her." She was concerned that mother's decision not to take medication for herself, even though she had been advised to do so, indicated she might take the same attitude toward the baby's needs. "How would that be for this baby needing medical care that normal babies need? Not that there is any problem with this baby. She has her own idea and it didn't feel grounded in what a baby would need."

After social worker Lutz finished her testimony, mother waved her hand to speak. After conferring with her attorney, she began to speak directly to the judge, despite the court's request that she let her attorney speak for her. Mother evidently wanted the doctors who worked with her to testify, and argued with the court about the purpose of the jurisdiction hearing. She continued to interrupt during closing arguments.

At the close of the hearing, based on the testimony and report by social worker Lutz and the court's own observations of mother's behavior during the hearing, the court found true the allegation that mother is unable to adequately supervise or protect the child due to her untreated mental illness.

IV. Contested Disposition Hearing on May 30, 2013

Bureau social worker Munisha Vohra recommended that the child remain out of mother's custody because mother had not addressed the mental health issues that brought her to the Bureau's attention. Mother's hospital records indicated she had a diagnosis of psychosis NOS, two "5150's", was non-compliant with medication, and noncooperative with the hospital's psychiatrist. Due to mother's lack of cooperation, the hospital's psychiatrist, Dr. Porat, was unable to obtain enough information from mother to confirm a diagnosis or make treatment recommendations. Before the Bureau could make any decision about returning the child to mother, the Bureau "need[ed] to have . . . [a] complete evaluation, with appropriate diagnosis and [treatment] recommendations." Mother neither agreed with nor rejected Vohra's recommendation for a psychiatric evaluation.

Mother had been visiting with the baby once a week for almost two months and had not missed any visits. Mother was appropriate with the baby: holding, caressing, kissing and talking to her. Mother tended to talk about the foster parent and other anxiety-producing issues, and had to be redirected to focus on just being with the baby. There had been a feeding issue at the first visit, but Vohra showed mother the correct way to feed and mother followed the instructions, so there were no further feeding issues after the first visit.

Vohra had spoken to father several times and recommended he be given family reunification services. The Bureau was concerned he would not be able to provide a safe environment for the baby at this time because he needs to address the substance abuse and behavioral issues that contributed to the Bureau's involvement in G.C.'s case. He showed up at the hospital under the influence, and had a substance abuse problem. He was living with mother. He gets agitated and angry very quickly when the social worker tells him something he does not want to hear. She also observed him get very agitated with mother during visits.

Otherwise, father was very appropriate with his baby during his once-a-week visits and seemed to understand age-appropriate behavior and development.

Father contested the need for him to successfully complete a 52-week anger management program, as recommended in the case plan. Father presented evidence he successfully completed a 52-week domestic violence education and counseling program on February 21, 2004. Social worker Vohra maintained father needed to address his quick temper, which was evident to her from her very first contact with him, even though she did not know about his completion of the prior program before the hearing. As a possible compromise, she recommended he address anger management in his individual counseling sessions as an alternative to the 52-week class. Father did not want to discuss this suggestion because he was planning to contest the allegations in court, and insisted

he did not do anything wrong. Father did not appear to have any insight into his anger management issues.

Mother testified on her own behalf. She supposed she would not have a problem with seeing another psychiatrist for an evaluation at the time of the disposition hearing. She did not have any problem with participating in a parenting program, as long as Child and Family Services did not have the power of “deciding whether or not I’m doing a good job in that parenting class, and deciding from there whether or not I should get my child back,” because she claimed they misuse their control, drag their feet and do not do their job. She did not have a problem complying with the case plan, except she wanted to edit the recommendations. She had obtained food stamps, WIC and MediCal, and was on the list for Section 8 housing. She had a pending social security appeal. She was again crashing at father’s place for the past few days.

Father testified on his own behalf. He had offered mother a place to stay for a few days but, after the hearing that day, she would be staying elsewhere. He learned “limitless” skills in the anger management class he took, such as breathing, counting to 10, and walking away from people who cross his boundaries or exhibit toxic behavior. He lived a healthy lifestyle and avoided bars or people who drink regularly. One of the things he learned in the anger management program he completed “is that continuing to do the same thing over and over and expecting to get . . . different results is the definition of insanity.” He now said he would be willing to address anger management in individual counseling, but considered one additional year of anger management “way too extreme.”

He visits with his daughter every chance he gets, which was once a week. He had arranged to visit separately from mother because she “tends to want to micromanage while I’m holding the baby.” They were now each visiting G.C. separately for an hour each week.

The court ordered reunification services for both parents. With respect to father, the court stated: “[H]is case plan for anger management must be at a treatment program. I am not giving permission for it to be just under counseling.”

With respect to visitation, both parents complained that the social workers were often late in bringing G.C. to the arranged visits. The disposition report recommended supervised visitation with mother for a minimum of one hour two times per month, and supervised visitation with father for a minimum of one hour two times per month. The court stated it found the visits to be “good,” but adopted the report’s recommendation stating: “[V]isitation for both parents will be a minimum. That’s a minimum. If we can do more, we will do more. I think they have been very generous in doing the once a week. [¶] I applaud Social Service, with the budget cuts, and the very limited staff they have, for trying to make these visits every week, but I am ordering that they must be at least two times a month; must be supervised. [¶] . . . [¶] One hour. That’s a minimum. It doesn’t mean the[re] can’t be more.”

The court adjudged G.C. a dependent child of the court, finding by clear and convincing evidence that “there is a substantial danger to the physical or emotional health or well-being of the child, and would be if the child were returned to them” and that “placement of the child with the mother and father would be detrimental to the safety, protection or physical or emotional well-being.”

V. ICWA

On March 19, 2013, an ICWA inquiry was made of mother, who stated she had no American Indian ancestry. An ICWA inquiry was not made of father because “he was not cooperative.”

On April 30, 2013, father signed an ICWA-020 form (“Parental Notification of Indian Status”) averring that he is or may be a member of, or eligible for membership in, the Cherokee tribe because his grandmother, Sophie Alford, is or was a member of that tribe. The disposition report dated the same day noted that G.C. may be Cherokee and

ICWA eligible, and that notices had been given in court to the parties and the attorneys on April 18, 2013. ICWA was not mentioned at the disposition hearing on May 30, and no notice to the tribe is included in the clerk's transcript.

DISCUSSION

I. Substantial Evidence Supports the Jurisdiction Order

Mother contends there is insufficient evidence to support the jurisdictional finding that “mother’s *mental illness* placed [the minor] at a substantial risk of harm.” (Italics added.) At the outset we observe the petition alleged, and the court found, that mother was unable to adequately supervise or protect her child because of her “*untreated mental illness*.” (Italics added.) As we explain below, the record contains sufficient evidence to support that finding.

The juvenile court’s jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) “ ‘ “When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” ’ [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding.” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.)

Mother does not dispute she has a diagnosis of psychosis NOS and exhibited “odd and uncharacteristic” behavior at the hospital and in court. She also concedes her history of short-term psychiatric hospitalizations was evidence she “may have been in need of mental health treatment” She argues correctly the Bureau “has the burden of

showing specifically how the minor has been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent.” (See *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) She claims the Bureau did not carry that burden here. We disagree.

The evidence presented through social worker Lutz’s testimony established that mother acknowledged she had very paranoid thoughts about what doctors, nurses, hospitals and governmental agencies do to people. For example, she believed she had been involuntarily drugged while detained in a psychiatric facility, and involuntarily sterilized after giving birth. She “knew” the government pays hospitals to perform tubal ligations on welfare recipients. Mother also expressed the belief that if something hurt her, then it must hurt the baby, too. Based on these and other statements made by mother to Lutz and other persons who were caring for her during her pregnancy and after the birth, Lutz concluded that mother did not have a good grasp of reality.

Lutz expressed concern that mother did not want to discuss her mental health or her level of functioning, only what resources she had in place for the baby. “I was being spoken at a lot of the time,” Lutz testified. “[S]he didn’t hear my concerns.”

Mother refused to take medication for her mental illness even though she had been advised to do so. Mother’s decision not to take medication for herself, against medical advice, was of most concern to Lutz because it indicated mother might take the same attitude toward the baby’s needs. “How would that be for this baby needing medical care that normal babies need? . . . [Mother] has her own idea and it didn’t feel grounded in what a baby would need.”

Mother’s untreated mental illness caused her to have paranoid thinking which, because it remained untreated, was likely to continue indefinitely. Her paranoia manifested itself in a profound distrust of hospitals, doctors, nurses and government agencies, as well as an irrational belief that if a particular treatment hurt her, it would also hurt her baby. This type of paranoid ideation posed a real, substantial and non-speculative

risk that if a hospital, doctor, nurse or agency recommended a necessary treatment for the baby that mother found harmful, she would refuse to allow the baby to be treated, just as she refused treatment herself.

Mother relies on *In re David M.* (2005) 134 Cal.App.4th 822 in which the appellate court reversed a jurisdiction order because the social services agency failed to show “evidence of a specific, defined risk of harm to [the minors] resulting from mother's or father's mental illness” (*Id.* at p. 830.) However, in our view, *David M.* is factually distinguishable. David and his sibling, A., were detained when they were two years old and two days old, respectively. (*Id.* at p. 825.) The petition filed by the agency alleged mother had a history of mental illness, including a delusional disorder that rendered her incapable of caring for David and A. (*Ibid.*) However, “[n]o current evaluation of mother's mental condition was conducted in connection with David's and A.'s dependency proceedings.” (*Id.* at pp. 826-827.) The social worker's information regarding mother's delusional disorder came from another social worker's summaries of a three-year-old evaluation that the social worker in the current case did not read in its entirety. (*Id.* at p. 831.) Mother had never been hospitalized or involuntarily committed due to her mental disorders. “The social worker testified the only evidence that mother was currently suffering from a psychiatric or psychological disorder was the 2001 diagnosis, coupled with the social worker's lack of any information that mother had sought treatment since her diagnosis: ‘I've uncovered no new information to . . . discern whether or not she would currently be diagnosed with the same illness.’ ” (*Id.* at p. 827.) On the other hand, the uncontradicted evidence showed that two-year-old David “was healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home. Whatever mother's and father's mental problems might be, there was no evidence those problems impacted their ability to provide a decent home for David. . . . If [the agency] had any concerns about mother's and father's ability to care for David during his infancy, we have no doubt [the agency] would have initiated dependency proceedings

for him long ago.” (*Id.* at p. 830.) Finally, the social worker testified “she had no evidence mother was unable to care for or protect David, and that because A. was taken from mother’s custody immediately after birth, there was no ground for saying mother was unable to care for or protect him.” (*Id.* at p. 827.)

Here, mother’s case is very different. She self-reported that she had been diagnosed with psychosis NOS and had suffered two psychiatric hospitalizations because of it. Social worker Lutz’s recommendations were not based on stale reports of paranoid behavior. In addition to her own observations of mother’s behavior, Lutz relied on credible reports that mother had acted bizarrely enough for her prenatal physician and post-birth clinical psychologist to express concerns about her ability to care for a newborn. Hospital nurses documented mother’s worrisome paranoid ideations and observed her leave the one-day-old infant alone in the room while she left to search for father in the hospital lobby. Mother also displayed impulsive and unstable behavior in the courtroom. Coupled with her refusal or inability to accept that she had a mental condition that required evaluation and treatment, the evidence here, unlike that in *David M.*, established a sufficient nexus between mother’s current untreated mental illness and the risk she posed to her baby’s well-being because she extended her paranoid ideas to the baby’s care.

II. *Substantial Evidence Supports the Disposition Order*

Mother contends the disposition order continuing removal of G.C. from her care is likewise unsupported by substantial evidence. Again, we disagree.

“ ‘ “After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision.” [Citation.] “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been

actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances.” ’ [Citation.] [¶] ‘ “Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child.” ’ [Citations.] ‘Whether the conditions in the home present a risk of harm to the child is a factual issue.’ [Citation.] The court's dispositional finding is also subject to a sufficiency of the evidence standard of review. [Citation.]” (*In re Lana S.* (2012) 207 Cal.App.4th 94, 105; see also § 361, subd. (c)(1).)

At the disposition hearing, the required findings must be based on clear and convincing evidence, that is, evidence that is so clear as to leave no substantial doubt. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

In our view, the evidence adduced at the disposition and jurisdiction hearings amply supports the court findings by clear and convincing evidence that continued removal of the baby from mother’s care was necessary. Mother’s testimony established that she remained paranoid and was resistant to evaluation or treatment of her mental illness. It was painfully clear that mother had not addressed the mental health issues that brought her to the Bureau’s attention in the first place, and the minor under the court’s jurisdiction. The record contains sufficient evidence to support the court’s disposition findings.

III. Parents’ Complaints About Visitation Are Moot

Mother and father contend the court abused its discretion in reducing visitation to one hour twice a month instead of once a week for budgetary reasons without regard to G.C.’s best interests. At the outset, we note the actual number of hours of visitation remained the same after the court’s order reducing the frequency of visitation from once a week to twice a month. Originally, mother and father shared visitation with G.C. for one hour per week. After father complained about mother, however, each parent was granted

a separate hour of visitation, for a total of two hours per week. Thus, the court's challenged order in effect restored the original number of hours when it reduced the frequency of visitation, apparently to make visitation less burdensome for the social workers involved. In any event, at the Bureau's unopposed request, this court has taken judicial notice of the minute order for January 16, 2014, which shows the court restored visitation to one hour per week per parent. On the basis of that minute order, the Bureau argues the issue is moot. Father argues the issue is not moot, because the order "does not mention the frequency of the visits between Father and [G.C.]." Father is incorrect.³ We therefore agree with the Bureau that the visitation issue is moot, and we need not and do not address whether the court erred.

IV. The Court Did Not Err By Requiring Father to Enroll In An Anger Management Program

Father contends the court abused its discretion by ordering him to complete a 52-week anger management program. He argues the court set him up for failure, since he could not possibly complete a 52-week program in the six months allotted for reunification. The Bureau contends this argument "misses the point" because "[i]f father enters a year long [sic] anger management program and is doing well by the time of the six-month review period, the court has the power to extend services for an additional six months."⁴

We think both parties miss the point. The case plan proposed by the Bureau prior to the hearing required father to "enter and successfully complete a 52 weeks [sic] anger management education program." However, at the hearing, social worker Vohra modified that position; she testified that as a possible compromise, to gain father's

³ The minute order states: "Visitation to be arranged and father may be [and] mother must be supervised by Social Service or approved adult (at the discretion of worker): Minimum: 1 hr, 1 x weekly."

⁴ The Bureau also contends the father's argument is moot because he "acknowledged his need for anger management and counseling as set forth in the disposition case plan of record" at the January 16 review hearing. The minute order does not state he agreed to a 52-week anger management program. That issue is not moot.

cooperation, she had recommended he address anger management in his individual counseling as an alternative to the 52-week class. Father rejected that compromise, preferring to challenge the case plan in court, and at the hearing maintained he had already completed a 52-week program once and did not need to complete another one. At the conclusion of the hearing, the court did not order defendant to enter and complete a 52-week anger management program. The court ordered: “As to father, his case plan for anger management must be at a treatment program. I am not giving permission for it to be just under counseling.”

We review the court’s order that father address his anger management issues through a formal anger management program in addition to counseling for substantial evidence. (*In re Jasmine C.* (2003) 106 Cal.App.4th 177, 180 [order to attend parenting classes].) The court’s order requiring father to address his anger management problem through a program rather than through individual counseling is amply supported by the record, including father’s interruptions of the court proceedings which show that, despite father’s completion of a 52-week anger management program several years earlier, he continued to have significant anger management issues and needed a refresher course. No error is shown by the court’s actual order.

V. The Record Does Not Show Compliance with ICWA’s Notice Requirements

Father contends the disposition order must be reversed because of the lack of notice to the Cherokee tribe concerning G.C.’s potential Indian ancestry, as required by ICWA.⁵ The Bureau concedes the “ICWA requirements were not completed at the disposition hearing” The Bureau asserts the issue is moot because “It has now been completed and the child has been determined not to be an Indian Child as indicated on the October 22 minute order.”⁶ But the record, including documents we judicially noticed at

⁵ Mother joins in, and incorporates by reference, father’s ICWA argument. (Cal. Rules of Court, rule 8.200(a)(5).)

⁶ The “October 22 minute order” was not provided to the court.

the Bureau's request, shows none of that. The additional documents show only that on January 9, 2014 father submitted a new ICWA-020 form providing information about one Sophie Crowley or Crowly; and that on January 16, 2014 the court ordered father to provide additional identifying and contact information concerning other relatives who may have Indian ancestry. The declaration in support of the motion for judicial notice states only that father complied with the court's January 16 order and that the Bureau "is attempting to contact his relatives" with an ICWA compliance date set for February 26, 2014.

Pursuant to 25 United States Code section 1912(a), "In any involuntary proceeding in a State court, where 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." Welfare and Institutions Code section 224.2, subdivision (a)(1) similarly provides that notice to the tribe "shall be sent by registered or certified mail with return receipt requested."

Father has provided sufficient information to put the court on notice that G.C. has some Indian ancestry, and the Bureau does not argue otherwise. However, on the state of the current record before us, we cannot conclude the Cherokee tribe has been notified as required by ICWA. When the record fails to show proper ICWA notice, the remedy is a limited remand to the juvenile court with directions to direct the Bureau to comply with the notice provisions of ICWA. We decline to reverse the jurisdictional and dispositional orders because there is not yet a sufficient showing that G.C. is an Indian child within the meaning of ICWA. If after proper inquiry and notice a tribe determines G.C. is an Indian child, any interested party may petition the court to invalidate any orders that violated ICWA. (See *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467; *In re Damian C.* (2009) 178 Cal.App.4th 192, 199-200.)

DISPOSITION

The matter is remanded with directions to the juvenile court to direct Contra Costa County's Children and Family Services Bureau to provide proper notice under ICWA; in all other respects, the court's jurisdiction and disposition orders are affirmed.

Dondero, J.

We concur:

Margulies, Acting P.J.

Becton, J.*

* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.