

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re HAILEY O. and LAYLA O., Persons  
Coming Under the Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

KATE K., et al.,

Defendants and Appellants.

A141547

(Humboldt County  
Super. Ct. Nos. JV140002-1 &  
JV140002-2)

Both parents of minors Hailey O. and Layla O. appeal from the dispositional orders of the juvenile court declaring the minors to be dependent children. The father contends that: (1) the juvenile court abused its discretion by requiring him to participate in a substance abuse program and to submit to random drug testing, and (2) the juvenile court did not comply with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)). The mother joins in these contentions, and further contends that: (1) she did not receive adequate notice advising her of the dependency proceedings; (2) respondent Humboldt County Department of Health and Human Services (Department) made inadequate efforts to locate her prior to several hearings in the dependencies; and (3) the juvenile court abused its discretion when it denied her reunification services. Because these contentions cover virtually every aspect of the dependencies, setting out a

procedural history would entail unavoidable repetition when the merits of the contentions are discussed. To avoid such redundancy, we adopt the slightly unorthodox procedure of proceeding directly to the contentions, and incorporating whatever background is appropriate.

### **Mother Received Constitutionally Sufficient Notice**

Mother was not present at the first hearing on January 6, 2014, at which the minors were ordered detained, and at which the pretrial hearing was set for January 21 and the jurisdictional hearing set for January 22. Notice of the jurisdictional hearing was mailed to Mother at an apartment on Samoa Boulevard in Arcata because an “Absent Parent Search . . . conducted on the mother” showed that “she receives mail” at that address. Mother was present at the pretrial hearing held on January 21 when counsel was appointed for her. After the court inquired whether counsel was “comfortable with it [the jurisdictional hearing] remaining set” for the next day, Mother’s counsel replied “Yes.” Mother was also present at the jurisdictional hearing held on January 22, where, through counsel, she agreed to a “resolution” involving amendment of the petition and the juvenile court sustaining the amended allegations.<sup>1</sup>

Mother was not present on February 25, the date set for the dispositional hearing. Nor was she present on March 26, when the scheduled reset dispositional hearing was

---

<sup>1</sup> Mother was in effect admitting the following amended allegations: “The mother has failed to make an appropriate plan for the children. The children were left with no provisions of support by the mother. The mother could not be contacted by family or the Department and has made no attempts to contact her children. Such abandonment by the mother places the children at risk of abuse and neglect,” and “The mother may have unaddressed substance abuse issues that render her incapable of providing regular care to her children. After the mother was reported missing, the Arcata Police Department found the mother and reported she was under the influence of what appeared to be methamphetamines and was in no condition to parent.” It was further alleged in the petition that by reason of these allegations the minors qualified as dependents within the meaning and scope of Welfare and Institutions Code section 300, subdivision (b). The father in effect admitted the allegation that he “is incarcerated and has failed to provide an alternative plan for the safety of his children,” thus bringing them within the scope and meaning of subdivision (g).

continued to April 8, so that the Department could fully document its due diligence in attempting to ascertain Mother's whereabouts. Mother was not present on April 8, when, at the close of the dispositional hearing, the juvenile court stated: "[T]he Court finds by clear and convincing evidence . . . the Humboldt County Department of Health and Human Services has exercised due diligence in attempting to locate the [children's] absent mother, and there's clear and convincing evidence that the whereabouts of the mother remain unknown."

Mother advances three contentions concerning this finding, and whether she received constitutionally adequate notice: (1) "It violates a parent's due process when the social agency fails to make a good-faith effort to inquire about a parent's mailing address, but thereafter faults the parent for not providing it"; (2) "The 'searches' performed by [the Department] to locate [Mother] were inadequate and perfunctory, not reasonably designed to locate [Mother], and fell far short of the due diligence requirements which demand a thorough and good-faith search effort"; and (3) "It violates a parent's fundamental due process when notice is not provided for significant hearings affecting their parental rights to their children, and the prejudice is of such magnitude as to require reversal of the orders entered."

"Parents are entitled to due process notice of juvenile court proceedings affecting the care and custody of their children, and the absence of due process notice to a parent is a 'fatal defect' in the juvenile court's jurisdiction. [Citation.] Due process requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' [Citation.] The means employed to give a party notice for due process purposes must be such as one, desirous of actually informing the party, might reasonably adopt to accomplish it. [Citations.] [¶] If the whereabouts of a parent are unknown, the issue becomes whether due diligence was used to locate the parent. [Citation.] The term 'reasonable or due diligence' 'denotes a thorough, systematic investigation and inquiry conducted in good faith.'" [Citation.] Due process notice requirements are deemed satisfied where a parent cannot be located despite a reasonable search effort and the

failure to give actual notice will not render the proceedings invalid. [Citation.]” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247.) “[T]here is no due process violation when there has been a good faith attempt to provide notice to a parent who is transient and whose whereabouts are unknown for the majority of the proceedings. [Citations.]” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188.)

Mother’s contentions are framed in various ways, but the central point and common theme is attacking the juvenile court’s finding quoted above. That finding is to be supported if it has the support of substantial evidence. (See *In re Sarah C.* (1992) 8 Cal.App.4th 964, 974.) In applying the substantial evidence standard, “we draw all reasonable inferences in support of the finding[], view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

The Department’s showing consisted of a “Delivered Serviced Log [¶] All Contacts, Services & Visits” covering the period from January 1, 2014, to March 3, 2014, and a document titled “Absent Parent Search Information and Due Diligence Search Efforts” dated March 28, 2014, detailing records searches performed that date. They show that the Department’s social worker first began calling Mother on January 2. On that day and the next, the social worker could not leave a message because “the mailbox is full.” With another attempt on January 3, the social worker spoke with a paternal great aunt who apparently had custody of the minors. The caseworker “advised her there is a Detention Hearing on 1/6 at 1:00 PM” and “that I was trying to make contact with the mother to inform her of such. She said she believes mother picks up messages from cell phone but many times can’t leave a message.”

On January 6, the social worker (referring to herself as SW) “Called mom and was able to leave a message. I advised her there is a court hearing at 1:00 PM and if she has questions to call me.” Mother and social worker spoke sometime that day.<sup>2</sup> “Mom said that she received the SW’s message this afternoon too late to make it to court. . . . SW

---

<sup>2</sup> The entries do not state at what hour of the day the events narrated occurred.

told mom that since she wasn't in Court today she didn't officially get an attorney appointed but that Marie Ferrebeouf was on reserve for her and perhaps she should contact her for further instructions. SW gave her the attorney's phone number. SW also gave mom the next court dates. Pretrial on 1/21 at 1:30 and hearing on 1/22 at 8:30 AM. . . . [Mom] said that she thought she might be getting a job with her friends. SW asked her if she had a new address. She said that right now she is on Humboldt Hill staying with friends but no permanent place. SW asked her for the address which she was unable to give. SW asked her to contact the SW with any updated information regarding employment, address etc."

One week later, on January 13, the social worker "[l]eft a message for mom requesting she call back with times she would be available to visit with daughters as she had said she was going to be working. In addition, requested that she give me an address where she could be reached." The next day the social worker "left a voicemail requesting a call back." On January 15 the social worker reported speaking with the paternal great aunt, and "left a voicemail message for mom requesting a call back," but there was "[n]o contact attempted by mom."

On January 16, a different social worker spoke to Mother at "the residence," and provided her with information about medical providers for one of the minors. On January 16 and 17, other social workers spoke with other relatives about the minors' uncertain situation.

On January 21, the social worker twice "left a voice mail message for mom advising her that the pretrial hearing was scheduled for 1:30 PM today and hoped to see her there."

On January 22, at the jurisdictional hearing, "SW introduced herself to the mother. Mom said that she had been staying in Blue Lake and sometimes doesn't have reception. . . . She said that her plan has been to leave Humboldt County and move to Washington where she has family support. She has her mother and two sisters up there. She was waiting to have some money if she needed to pay for the tickets herself. The mother said that she went to a safe and sober house yesterday where she has been told she

can stay. She wasn't sure of the address. She explained that the reason she left the girls in the care of their grandmother was because she didn't have a place to stay and didn't want them going from place to place. SW explained that it is the Department's recommendation that the girls remain in care and to offer her FR [family reunification] services. The important thing is that she keep in touch with the SW . . . SW encouraged mom to work with us in order for her to be able to reunify with her girls."

On February 5, 10, 13, and 18, the social worker "[l]eft message requesting call back." Also on February 18, the social worker "[s]ent mom her rights brochure and community resource list as was only able to see her in Court."<sup>3</sup>

On February 24, the social worker recorded receiving the following text from Mother: "Hi . . . I've been trying to get ahold of you. And know you've been trying to get ahold of me. I've been having an extremely hard time due to no finances, having transportation or minutes on phone. And places I've been able to stay at are often far out from town with no phone available. I've made it back into Eureka and am trying to utilize the available resources to correct this. I was told you could help with bus passes and minutes for phone etc. I'm near courthouse now and will be walking down to Social Services to try and meet with you. Is there any good time today for this? Please let me know. I do have texting available on my phone. Thank you.

"SW responded: I have no calls from you so I'm not sure who you've been calling. I am out in the field for the rest of the day but can meet with you tomorrow morning if you want to come by.

"[Mother] responded at 4:36 pm: I was calling your office's voicemail. Then one of the ladies gave me your cell # so I could get a hold of you by text. Is there any way if I go into the office another worker could get me a bus card today? My concern is that I'll be going back shortly to where I'm staying—out of Eureka and don't have a way back to

---

<sup>3</sup> Nothing in the record shows a scheduled court proceeding or hearing on this date.

Eureka tomorrow. [¶] I also was needing a copy of the case papers I was given at court since all my belongings were stolen afterwards and I no longer have.”

On February 25, “SW checked vm [voice mail] as [Mother] stated that she has been trying to call SW for a while now. SW only received one vm dated yesterday.” That same day the social worker texted Mother; “I was not in the office yesterday evening and I’m not sure if you came by, but requesting bus tickets or phone cards is a process and it takes time for me to get it approved by the Department. I will have some later today if you can come by or I can give it to you at court.” The social worker also checked with another social worker to determine if Mother had called; the other social worker “had not heard from her either.”

Also on February 25, Mother and the social worker exchanged a number of text messages. “OK I’m in McKinleyville by the high school. My ride flaked out. I’m still trying to get a way to court.” “Could not get there. Was trying to get a ride all day, but everyone I asked said they were busy. I really wanted to be at court. Do I need call the courthouse at all to alert them of why I missed?” (To which the social worker responded “Contact your attorney.”) “I can still try and get to eka [Eureka] later today or tomorrow if there’s a way to get the bus cards. Or let me know what I need to do to request them and phone help. I’m still waiting to hear from Sandra<sup>[4]</sup> about visitation. Don’t know how long process takes but am dying to see my girls. [¶] I will try to get someone’s phone I can use and call her before end of day.” (The social worker replied to this: “She was trying to get a hold of you and stopped attempting. It is your responsibility to call her to set something up. I can leave the bus tickets for you at the front office but you will need ID to get it.”)

On February 26, Mother texted: “I called 2 days ago to set something up. The main problem in [sic: I’m?] having is no minutes on phone and nit [sic: not?] much

---

<sup>4</sup> The Department’s Disposition Report to the court identified “SSA Sandra Enriquez” as in charge of visitation, and the person who “attempted to contact [Mother] on multiple occasions to set up visitation. These attempts were not successful and [Mother] has failed to return any phone calls to arrange visits.”

access to phone in general. If the process can be started for phone minutes that would be helpful. Also I contacted my attorney today she told me to call you and get an appt. set up for services. I left a voicemail for you on office phone. Please text me when one can be set up. Thank you.” The social worker replied: “I have the bus tickets and phone card for you and would like to discuss this in person. When can you come to the office?”

On February 28, Mother texted the social worker: “Hi, are you in the office? I am down at social services. They had me call down to your desk,” and then came to the social worker’s office at 4:58, stating she had an appointment with social worker. The social worker did not learn of this until March 3, when she texted Mother: “You need to set up an appointment with me because it is not guaranteed I will be here. I don’t want you wasting your time coming here if I’m out in the field. Let’s meet tomorrow 10 am. Let me know if that works.” Later that day the social worker texted: “I see you’re not responding and I have someone coming in at 10 tomorrow. Let’s meet at 2:00 tomorrow. Let me know if that works.” Mother’s response was “I can try to arrange a ride, but it is never guaranteed,” and asking if the phone and bus cards could be mailed to “general delivery McKinleyville . . . . I have absolutely no money or family here so I’m stuck relying on friends that are not reliable,” and “I would like to set up the appt.” Mother’s final text message on March 3 was devoted to expressing her frustration at being unable to arrange visitation with her daughters.

The final entry on the log is for March 4, when the social worker texted: “I’ve attempted to set up an appointment with you twice but no response from you about the times I offered. How about you find a ride for Thursday and let me know what time that will be so I can work around it. If I don’t hear back from you on Wednesday about a time you can meet on Thursday, the appointment will not happen as I will not wait all day. I can explain visits with you then as it is too much to do on a text. Let me know if that plan works.”

On March 28, 2014, the Absent Parent Search Coordinator repeated a search done on January 8, 2013.<sup>5</sup> The results were the same:

“Results: Sent four AIR reports to addresses listed below for verification:

“General Delivery Eureka, CA 95501 (**Mail is delivered at address given**).

“226 A St. Bellingham, WA 98225 (**No such address**).

“115 Somoa Blvd Apt. 24, CA 95521-6738<sup>[6]</sup> (**mail is delivered to address given**).

“6335 Humboldt Hill Rd. R. Eureka, CA 95503-7181 (**other: moved 2007 to PO Box 3309 Eureka, CA 95502**).”

In the Department’s Disposition Report dated February 25, 2014, the social worker advised the court: “[Mother] was not able to be located to make a statement for this report.” At another point in the report Mother is described as “unreachable and her whereabouts are unknown.” And in an addendum to the report, the social worker reported that she “last heard from [Mother] on 03/10/2014 via text message.”

Mother attacks the Department for failing to make a good-faith effort to ascertain her mailing address, but the Absent Parent Search Coordinator’s search of March 28, 2014, showed that she was still receiving mail at the Samoa Boulevard address, which is where notices of hearings were sent to her. Mother identified herself as being first at “the residence,” then in “a safe and sober house” for a day, then in Humboldt Hill, and then in McKinleyville (after having, apparently, a stay in Blue Lake), and possibly in Eureka

---

<sup>5</sup> The date is misidentified as “January 8, 2014” in Mother’s brief.

<sup>6</sup> Although no city is specified, the zip code is easily verified as including the City of Arcata, which has a Samoa Boulevard within the municipal boundaries. Mother claims in her brief there is no Somoa Boulevard in Arcata. However, the misspelling of Samoa to Somoa on this source is not irredeemable. The correct spelling may have been given to the Post Office and simply misspelled by the Absent Parent Search Coordinator. Even if the address was incorrectly given as Somoa Boulevard, the Post Office may have rectified the mistake. Both of these possibilities become strong probabilities when considered against the chances of the Post Office reporting in two different years that it was delivering mail to Mother at a non-existent address, and is further fortified by the actual notices providing the name of the boulevard as Samoa.

("I've made it back into Eureka"), but she evaded the social worker's requests to provide a specific address. Mother likewise avoided the face-to-face meetings sought by the social worker and by the person charged with visitation. She was unwilling to live with any of her relatives who lived in the area (one of whom was deemed sufficiently stable and trustworthy to have initial custody of the minors), preferring instead a rootless and restless existence with people even she characterized as "not reliable." Mother demeans the Department for inadequate efforts to find her, but she never says where such efforts would have found her. In these circumstances, the juvenile court was entitled to concur with the social worker's conclusion that Mother was "unreachable and her whereabouts . . . unknown." In fact, the court stated: "[T]he problem with mother is that she's a moving target. It's unclear where she is at any one particular time."

When a parent's whereabouts are unknown, due process is satisfied if the social services agency employed due diligence to locate the parent. Those efforts need not be exhaustive or unremitting, just reasonable and undertaken in good faith. (*In re Claudia S.*, *supra*, 131 Cal.App.4th at p. 247; *In re Justice P.*, *supra*, 123 Cal.App.4th at p. 188.) The evidence recounted is more than ample to sustain the juvenile court's finding that the Department used due diligence to try locate Mother. (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 251; *In re Sarah C.*, *supra*, 8 Cal.App.4th at p. 974.)

### **The Juvenile Court Did Not Abuse Its Discretion By Denying Reunification Services To Mother**

There are a number of situations where a juvenile court is not required to order that reunification services be provided to the parent of a dependent child. This is one of them. "Reunification services need not be provided to a parent . . . when the courts finds, by clear and convincing evidence, . . . : [¶] . . . [t]hat the whereabouts of the parent . . . is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent . . . ." (Welf. & Inst. Code, § 361.5, subd. (b)(1).) This court has already noted that the dependency scheme does not "mandate[] that reunification services be provided to an empty chair." (*In re Derrick S.* (2007) 156 Cal.App.4th 436, 448.) Mother's argument that reunification

services “may be difficult for the [Department] to deliver” to a person whose whereabouts are unknown is completely untenable, and her claim that the juvenile court abused its discretion or misapplied the statute fails accordingly.<sup>7</sup>

**The Juvenile Court’s Finding That  
Respondent Complied With ICWA Is Not  
Supported By Substantial Evidence**

In the Disposition Report, the social worker stated: “The parents have been sent ICWA 020’s to complete. No responses have been received from either parent and there are [*sic*] no new information regarding Native American ancestry at this time. The Department recommends making a finding that ICWA does not apply.” The court made that finding at the dispositional hearing.

Mother states in her brief that she never received the form. She does not assert that she has any Indian ancestry, only that the Department did not ask. The record does have the form that Father returned to the Department. He checked the box “I may have Indian ancestry,” and elaborated: “I have heard I am part native but I don’t know [¶] ask my mom and dad?” After checking the box “One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe,” he reiterated: “ask my parents?” After checking the box “The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe,” he wrote: “If I am they are. Isn’t there a blood test we can take and find out?”

This is all there is in the record. It is not enough to demonstrate compliance with ICWA.

Our colleagues in Division Three have recently stated the governing principles: “ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (*In re Holly B.* (2009) 172 Cal.App.4th 1261, 1266; 25 U.S.C. § 1901 et seq.) If there is reason to believe a child that is the subject of a

---

<sup>7</sup> Still, it is regrettable that Humboldt County Counsel, representing the Department, elected not to address this argument in its brief.

dependency proceeding is an Indian child, ICWA requires that the child's Indian tribe be notified of the proceeding and its right to intervene. (25 U.S.C. § 1912(a); see also Welf. & Inst. Code, § 224.3, subd. (b).)

“ ‘Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under the Act irrespective of the position of the parents, Indian custodian or state agencies. Specifically, the tribe has the right to obtain jurisdiction over the proceedings by transfer to the tribal court or may intervene in the state court proceedings. Without notice, these important rights granted by the Act would become meaningless.’ (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.)

“Accordingly, federal and state law require that the notice sent to the potentially concerned tribes include ‘available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.’ (*In re Francisco* (2006) 139 Cal.App.4th 695, 703; *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.) To fulfill its responsibility, the Agency has an affirmative and continuing duty to inquire about, and if possible obtain, this information. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116; [Welf. & Inst. Code,] § 224.2, subd. (a)(5)(C); 25 C.F.R. [§] 23.11(d)(3); [Cal. Rules of Court,] rule 5.481(a)(4).) Thus, a social worker who knows or has reason to know the child is Indian ‘is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2 . . . .’ ([Welf. & Inst. Code,] § 224.3, subd. (c).) That information ‘shall include’ ‘[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.’ ([Welf. & Inst. Code,] § 224.2, subd.(a)(5)(C).) Because of their

critical importance, ICWA's notice requirements are strictly construed. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)” (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1396-1397.)

Strict construction is not required here. Without question, the Department was on inquiry notice of possible Indian ancestry. It was therefore clearly required, at a minimum, to follow up with Father and his parents. (See Welf. & Inst. Code, § 224.3, subd. (c) [“If the . . . social worker . . . 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 . . . and any other person that reasonably can be expected to have information regarding the child’s [tribe] membership status or eligibility”]; accord, Cal. Rules of Court, rule 5.481(a)(4)(A).) The Department clearly did nothing of the sort here. If notice to an Indian tribe is the core of ICWA, the notice is pointless if no adequate inquiry is made. (See *In re Louis S.* (2004) 117 Cal.App.4th 622, 630 [“Notice is meaningless if no information or insufficient information is presented to the tribe . . . .”].) The juvenile court’s finding of ICWA non-applicability is not supported by substantial evidence, and the Department’s inaction cannot be dismissed as harmless. (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251; *In re E.W.* (2009) 170 Cal.App.4th 396, 403-404.)

In the context of a dispositional order, failure to comply with ICWA is not jurisdictional because “to hold otherwise would deprive the juvenile court of all authority over the dependent child, requiring the immediate return of the child to the parents whose fitness is in doubt.” (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) The remedy is “a limited remand to the juvenile court for the Department to comply with the notice requirements of the ICWA, with directions to the juvenile court depending on the outcome of such notice.” (*Ibid.*)

**Whether the Juvenile Court Abused Its Discretion In  
Ordering Father To Participate In A Substance Abuse Program  
And To Submit To Random Drug Testing Cannot Be  
Determined At This Time**

At the dispositional hearing the court ordered the Department to furnish reunification services to Father,<sup>8</sup> and ordered him to comply with his case plan. One provision of that plan was as follows: **“Stay free from illegal drugs and show your ability to live free from drug dependency. . . . [¶] Description [¶] While incarcerated and upon release from jail, the father will remain free from all illegal substances. Upon his release from jail, the father will demonstrate his ability to live free from all chemical dependency and this will be measured by his attendance in recommended substance abuse treatment program and random negative toxicology screenings.”**

Father acknowledges that the juvenile court had broad discretion to fashion a dispositional order in the best interests of a dependent child, and that type of determination will not be reversed on appeal unless the reviewing court concludes that discretion was abused. (Welf. & Inst. Code, § 362, subd. (d); Cal. Rules of Court, rule 5.695(h); *In re A.E.* (2008) 168 Cal.App.4th 1, 4; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Father argues that discretion was abused because the part of his case plan ostensibly aimed at arresting a substance abuse problem is misdirected—that it is not him, but Mother, who has that problem.

We would ordinarily be receptive to a claim that this issue was not preserved for review because no objection was raised at the dispositional hearing. But this is another argument the Department chose not to address in its brief. Still, Father’s claim does reflect the record, for it was Mother who admitted having “unaddressed substance abuse issues,” and only Mother who has an alcohol problem. (See fn. 1, *ante.*) This raises the possibility that the provision might have been intended for Mother and was mistakenly

---

<sup>8</sup> At the start of the dispositional hearing, Father’s counsel stated that father was “incarcerated at San Quentin” and was “appearing by Court Call.” Father told the court that “my out-date should be August 30th. I’m trying to work on getting it sooner, but I don’t know.”

included in Father's case plan.<sup>9</sup> On the other hand, Father does concede there is a single hearsay reference to his "previous substance abuse" problem. Whether this reference alone was sufficient to support the case plan provision would be a close question, but it is one we are not compelled to address. As it has already been determined that the dispositional orders as to Father must be remanded, Father may at that time acquaint the juvenile court with his objection to the case plan provision.

#### **DISPOSITION**

The dispositional orders as to Mother are affirmed. The orders as to Father are vacated. The cause is remanded to the juvenile court with directions to direct the Department to investigate and obtain complete information about parental relatives and otherwise comply with the ICWA. If a federally-recognized tribe intervenes after receiving proper notice, the court shall proceed in accordance with the ICWA.

---

<sup>9</sup> But Mother's far shorter case plan did include provision for her to "demonstrate her ability to live free from drugs *and alcohol* which will be measured by her attendance in recommended drugs *and alcohol* treatment program and random toxicology screenings." (Italics added.)

---

Richman, J.

We concur:

---

Kline, P.J.

---

Miller, J.