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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re M.R., et al., Persons Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

A143692

(Contra Costa County
Super. Ct. Nos. J13-00865, J13-00866)

MEMORANDUM OPINION¹

The two children of M.R. (Father) and R.W. (Mother) were the subject of dependency petitions, filed July 19, 2013, alleging the children were at risk from Father's substance abuse and domestic violence. (Welf. & Inst. Code, § 300, subd. (b).) A few days after the children were detained, Mother submitted a form notifying the Contra Costa County Children and Family Services Bureau (Agency) that she might have Cherokee Indian heritage. No notice was sent pursuant to the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA) at that time, however, apparently because Mother had earlier told an Agency employee that the children did not have Indian ancestry.

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3).

After extended proceedings, the juvenile court terminated reunification services, finding neither parent was participating regularly in them. In advance of the permanency planning hearing, the Agency filed a report stating notice eventually had been sent to various Cherokee tribes under ICWA and no tribe claimed the children. Although the standard ICWA notice calls for the names and addresses of three generations of family members, the notice sent by the Agency listed only the parents' names and addresses and claimed the names and addresses of other relatives were unknown. At the hearing, the juvenile court found ICWA inapplicable and terminated the parental rights of both parents.

Father's appeal raises a single issue, contending the Agency's ICWA notice to the tribes was inadequate. Father claims the Agency failed to ask Mother for the required information about her family and points out the Agency was in possession of the names and addresses of two of Mother's relatives, one of whom should have been listed on the notice and both of whom could have been consulted for information about other family members. In a responsive letter brief, the Agency concedes the inadequacy of its compliance with ICWA, conceding "it appears that [the Agency] did fail to utilize the available information contained within the relative placement applications in these matters." Accordingly, the Agency does not oppose a conditional remand to permit ICWA compliance.

The Agency had a duty to exercise due diligence in locating all the information required by the standard ICWA notice. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116.) In conceding its failure, the Agency's letter brief refers only to its failure to consult the known members of Mother's family. In accepting the Agency's concession and remanding for ICWA compliance, we do not mean to suggest the Agency will necessarily fulfill its duty merely by consulting the two identified members of Mother's family.

The juvenile court's orders of November 7, 2014, terminating parental rights in both children, are reversed as to both parents, and the court's findings that ICWA is not

applicable are vacated.² The cases are remanded to the juvenile court with directions to ensure the Agency has complied with the notice requirements of ICWA. If, after new notice is provided, any of the Cherokee tribes claims either child is eligible for membership and seeks to intervene, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, the Cherokee tribes make no such claim following new notice and the court concludes the Agency's efforts at ICWA compliance were adequate, the inapplicability finding and the November 7, 2014 orders shall be reinstated as to both parents.

² The California Rules of Court forbid, with limited exceptions, the termination of the rights of only one parent under Welfare and Institutions Code section 366.26. (Cal. Rules of Court, rule 5.725(a)(2).) Accordingly, it is generally held that when the Welfare and Institutions Code section 366.26 termination of the parental rights of one parent is reversed, the termination of the rights of the other parent should be reversed as well. (*In re A.L.* (2010) 190 Cal.App.4th 75, 80.)

Margulies, J.

We concur:

Humes, P.J.

Dondero, J.