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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re L.R., a Person Coming Under the
Juvenile Court Law.

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

CHRISTEN D.,

Defendant and Appellant.

A145360, A146520

(Sonoma County
Super. Ct. No. 4355DEP)

Christen D., the mother of Olivia and Kelvin A. and L.R., appeals from orders terminating her parental rights. She contends the juvenile court erred when it denied her Welfare and Institutions Code section 388¹ modification petition without a hearing and

¹ Further statutory citations are to the Welfare & Institutions Code.

subsequently determined that the benefits of continuing her relationship with the children did not outweigh the benefits of adoption. Mother also asserts the social services agency failed to provide adequate notice under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA). Israel R., L.R.'s father, joins Mother's ICWA argument.

The court's rulings on modification and termination of parental rights are supported by the record, so we affirm them. However, the social services agency failed to comply with ICWA's inquiry and notice requirements, so we order a limited reversal for the court to correct the defect and reinstate the termination orders if, after adequate inquiry and notice, no tribe chooses to intervene in the proceeding.

BACKGROUND

Detention

In 2009 four-year-old Olivia A. was repeatedly molested by her father, Isidro A. Isidro admitted the abuse and was sentenced to an 18-year term in state prison. Mother and Isidro divorced in 2010.

In February 2014, maternal aunt April D. informed the authorities that Olivia, then nine, had been sexually molested by Mother's live-in boyfriend, Israel R. April reported that Olivia told her Israel "humped" her and "sometimes puts his thing in her. Sometimes it hurts, sometimes it doesn't." Olivia told April the abuse had been going on since Israel moved into the house three or four years earlier. Olivia said she told Mother about the abuse, but Israel "got really, really angry and Olivia did not think Mother believed her."

April confronted Mother. Mother acknowledged that Olivia told her about the abuse "a time or two before," but was not sure it was true because "Olivia only says this when she is angry with Israel."

Sonoma County sheriff's deputies arrested Israel and interviewed Mother, who denied that Israel would molest Olivia. Mother told the deputies that Olivia told her about two incidents of abuse, once about two years earlier and the second time about a week and a half before the interview, but Mother did not believe her.

Mother was also interviewed by a social worker. She "began wailing loudly that this was the 'second fucking time' this had happened" and that Israel "was the 'second

person to take a piece of my daughter.’ ” She said Olivia once mentioned the sexual abuse but Mother “chalked it up to a misunderstanding.” Mother said, “ ‘I don’t know what to believe. . . . [Olivia] pulls this shit out of her ass all of the time.’ ” Mother told the social worker she believed there was “Crete [*sic*] and Cherokee heritage for her family but had never pursued this. No one is registered with a tribe.”

Olivia was interviewed at the Redwood Children’s Center. She described four to six incidents of sexual abuse. She told Mother about the abuse the previous night and twice before, but Mother called her a liar. She finally told her aunt April about it because “I just wanted to get rid of that problem so it wouldn’t happen anymore.” Mother tested positive for methamphetamine and amphetamines. She said Israel “was often angry and violent” so she supplied him with large amounts of methamphetamine to keep him happy. Israel admitted to sexually assaulting Olivia and gave a written statement to the sheriff’s deputies.

The children were detained and the Sonoma County Human Services Department (the Department) filed petitions alleging that Olivia, six-year-old Kelvin, and 22-month old L.R. were at substantial risk of harm due to Olivia’s molestation, Mother’s substance abuse and failure to protect the children, and both fathers’ incarceration.

Jurisdiction and Disposition

The report for the combined jurisdiction and disposition hearing described child abuse referrals in 2012, 2010, and twice in 2009. Only the first 2009 referral, which concerned Olivia’s molestation by her father, was substantiated. The others, for general neglect and physical or emotional abuse, were deemed inconclusive or unfounded.

Mother described herself to the social worker as a “social tweaker. I was basically keeping an addict high. I would use off and on. I would give Israel meth in order to keep him happy. When he was coming down all hell would break loose and he was mean to me and the kids. . . . I also know my addiction and I know that I need to get help for it. I have already called Marina at Drug Free Babies for an intake appointment. I am hoping to get into residential soon.”

The social worker interviewed Olivia and Kelvin. Olivia recounted the abuse and her attempts to disclose it to Mother. Both she and Kelvin described domestic violence between Mother and Israel, who “fought almost daily.” Olivia said she and her brother often had to take care of L.R. while Mother and Israel fought or were “hanging out with their friends.” Kelvin said “Israel makes drama cause he makes my mom mad” and “was always cussing at his mother calling her, ‘Fucken bitch, you ungrateful little bitch.’” Mother and Israel often “ ‘partied with their friends.’ ” Israel would “ ‘squeeze my arm really hard and smack me on the head if I did not listen to him’ ” and once dragged him across the room and threw him on the bed.

The Department recommended that reunification services be offered only to Mother. Mother understood that she should have believed Olivia and was remorseful for failing to protect her children. She was making “steadfast efforts” to remedy the problems that brought the children to the Department’s attention. She admitted her substance abuse, was testing clean for illegal substances and was on a waiting list for Women’s Recovery Services (WRS), a residential substance abuse treatment program. The social worker opined that Mother’s prognosis for reunification was very high.

The children’s attorney had a different opinion. In a trial brief opposing the Department’s recommendation, counsel argued reunification services would not be in the children’s best interests because Mother allowed Israel to live in the home despite Olivia’s repeated reports that he was sexually abusing her and exposed all three children to sexual abuse and chronic family violence. The children were emotionally traumatized, and did not express an imminent desire to return home. Mother and Israel fought constantly, Mother had threatened to kill herself and the children, and she had undergone two section 5150 psychiatric assessments in the previous two years. Both Mother and Israel admitted physically abusing the children and abusing marijuana, alcohol and methamphetamine.

The parties submitted on jurisdiction and agreed to continue disposition until Mother submitted to a psychological evaluation. Psychologist Barbara Prosniewski conducted the evaluation. Her report noted that Olivia’s therapist said Olivia loved

Mother but did not trust her. According to the therapist, Olivia had major trust issues and seemed afraid to share her feelings because she would not be believed or would be abandoned. She might want to reunify with Mother eventually, but not yet.

Dr. Prosniewski also interviewed the program director and case manager at Mother's residential drug treatment program. They reported that Mother was making slow progress but was fearful that "being in the outside world might be too hard for her to handle and not use any drugs. . . . [h]er method of coping is mainly avoidance."

Dr. Prosniewski reported that Mother "tended to minimize/not understand the effects of her behavior on her children" and denied that Olivia reported the molestation more than once. Asked about Israel, Mother told Dr. Prosniewski that "I had to keep him high, cause he was super mean to me and the kids, and I had to keep him high to keep him from being mean. I don't know what happened, [Olivia] became really enraged with him, she was playing and he wanted her to do a chore, wash the dishes, I think it was. She got mad at him and just out of nowhere . . . she told me that a long time ago, he had her put her hands down her pants, I went to that place, 'oh no, not again.' Instead of going to someone, I went to her. It got chalked up to a language misunderstanding. I didn't know if anything happened until the night before they came and arrested him."

Dr. Prosniewski also noted that Mother "has some unusual belief and opinions. For example, she owned a motor home where they all lived. She has since given this home away (apparently with some of the children's toys still in it). [] She gave it away 'cause it has bad karma.' If she were to sell it and make some money off this sale, it too would have bad karma and so she fears that the bad karma will follow her. Along this line of thinking, she refused to complete some of the Incomplete Sentences due to fearing that these thoughts might come true."

Dr. Prosniewski concluded that Mother's attachment to Olivia was "not that of a healthy mother/child relationship." Mother "is herself a young child. She is impulsive. She has not been nurtured enough. Her maternal instincts are extremely minimal in that she does not know how to really care for children in a way that recognizes their needs as being different from hers. She does love them—in her own way. She has a long standing

pattern of looking at her world from the perspective of what it is that she needs rather than looking at the world from a perspective that she is a mother now and her first responsibility is . . . meeting the needs of her children. Despite the current treatment that she is utilizing, and she is benefitting from it, she has a very long way to go to become the mother that her children need her to be.” Because of Mother’s emotional deficits, Dr. Prosniewski opined the children could not safely be returned within six months. Indeed, “[f]or her to be able to function as a good enough mother to her children on her own within 12 months would be a highly unrealistic expectation.”

Based on the psychological evaluation, the Department changed its recommendation to bypassing reunification. Mother submitted to disposition on the reports. The parties agreed that she could continue in her residential program at WRS, therapy, and visitation.

The court found the allegations true, declared the children dependents of the court, adopted the Department’s recommended findings and orders and set a section 366.26 hearing for December 4, 2014. On August 26, following a contested hearing, the court ordered the children placed with April and maternal grandmother Patricia D. in Shasta County, about four hours away.²

On November 24, 2014, the Department recommended termination of all parental rights and a permanent plan of adoption. The children had been living with April and Patricia since October 3. Mother had visited the children consistently, but the visits generated a number of concerns. Each time, Mother demanded physical affection that made the children uncomfortable and made them feel guilty if they were reluctant to comply. She also made inappropriate and bizarre comments. When Kelvin excitedly approached her about his loose teeth, she refused to look and launched into a story about her own fears and nightmares about losing her teeth. When Kelvin was tearful and sad during another visit Mother “attempted to distract him by tickling him and when that didn’t work she told him to stop his ‘bologna.’” When Kelvin reported that he was

² At the time the children were in an emergency foster placement.

struggling with another child at school, the mother told the children that the other moms at Kelvin's school 'don't punish their kids because they are too busy drinking wine.' During another visit [Mother] told Olivia that they should be teaching sex education at her school and said, 'If they think kids aren't experimenting with each other then they are incorrect.' ” She said to Olivia, “ ‘Your school is so corrupt.’ ” On another occasion she left hidden notes for all three children without the social worker's approval. Mother also repeatedly failed to supervise the children adequately and made inappropriate statements and promises about the future.

April and Patricia had been referred for an adoption home study. The children were progressing academically, emotionally and behaviorally. The Department opined that they were adoptable and that there were other families that would be interested in adopting them if April and Patricia could not.

The section 366.26 hearing was continued several times. Then, on February 3, 2015, Mother filed a section 388 petition asking the court for reunification services and to continue the permanency planning hearing for six months and return the children to their former foster home in Sonoma County. She alleged as changed circumstances that she had completed the WRS program, enrolled in the Drug Abuse Alternatives Center (DAAC) perinatal program, secured a Narcotics Anonymous (NA) sponsor, attended NA meetings, participated in therapy with a DAAC counselor, completed coursework in domestic violence education and been sober for almost a year. The petition alleged the modification would be better for the children because they “love and miss their mother; since being placed with their maternal aunt, Kelvin has stated he ‘hates his new school’ and [L.R.] ‘misses her mom.’ [L.R.] a states during visits ‘Mommy I go with you in your car.’ The minors have been with the aunt only since October (so their therapists and school have been changed recently.) Mother is in stable housing (Giffen House), solid in her recovery, and ready to receive her children.” She was remorseful for failing to protect the children and wanted to break the cycle of violence, bad parenting and substance abuse.

The court denied the petition without a hearing. The order, dated February 10, 2015, explained that “mother’s circumstances are changing and the first important first step in the process[,] sobriety[,] is going well. With sobriety the mother can embark on the long journey that will address the significant issues outlined in Dr. Prosniewski[’s] report.”

The contested section 366.26 hearing was held on April 6, 2015. The children’s counsel supported the Department’s recommendation of adoption and stated that Kelvin and Olivia had an “age-appropriate understanding of today’s proceedings and do wish the Court to proceed in terminating parental rights.”

Adoption social worker Traci Bernal testified that she would be able to find an alternative adoptive home for the children if the aunt and grandmother were unable to adopt. She also affirmed it was legally feasible for the aunt and grandmother to jointly adopt the children.

Mother testified that Olivia was “bright and like just seemed more happy” when she was in foster care, but since the move she was “more subdued, and just different, like suppressed or something.” She would have supported adoption by the former foster parents but was opposed to adoption or guardianship by her sister and mother, whom she did not think capable “[d]ue to the lack of emotional support that I didn’t receive as a child growing up.” Since the children were placed in Shasta County her relationship with Olivia had been “significantly fading.” Mother felt Kelvin looked to her for parenting and to calm him down and reassure him when he had outbursts. Mother believed L.R. wanted to come home to her because at the end of their visits she would say “ ‘Mommy, I go with you in your car, mommy. I go to your house.’ ” She said she had learned to respect her children’s boundaries when they rejected physical affection.

Mother conceded the children “may” be adoptable, but objected to the placement with April and Patricia because they did not yet have an approved home study. The court found by clear and convincing evidence that the children were likely to be adopted and that terminating parental rights would not be detrimental. Accordingly, it terminated Mother’s and both fathers’ parental rights.

The Appeals and Writ Petition

On June 4, 2015, Mother filed a notice of appeal from the orders terminating her parental rights and denying her modification request. Israel appealed from the termination of his parental rights. Mother subsequently filed a petition for writ of habeas corpus asserting ineffective assistance of counsel, which we consolidated with her appeal.

DISCUSSION

I. Modification Petition

Preliminarily, we note Mother's appeal directed to the denial of her modification petition is untimely. (*Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1068 [denial of section 388 petition is an appealable order]; *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150; unappealed post-disposition order may not be attacked on appeal from subsequent appealable order].) However, Mother asserts her attorney's failure to file a timely notice of appeal from that ruling deprived her of the effective assistance of counsel, so we will address the issue in that context.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.] The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) Moreover, “To support a section 388 petition, the change in circumstances must be substantial.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) We review the juvenile court's determination for

abuse of discretion. (*In re Zachary G.*, *supra*, at p. 808; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450.)

On this record, the court properly found that Mother failed to make a prima facie case that the proposed modifications would promote the children's best interests or that changed circumstances warranted further consideration of reunification and placement. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) When dependency proceedings are at the stage of the section 366.26 hearing, the parent's interest in the care, custody and companionship of the minor is subordinate to the child's needs for permanency and stability. (*Id.* at p. 309.) A section 388 petition that would, if granted, delay the child's placement in a permanent home to see if a parent may someday be able to reunify with the child "does not promote stability for the child or the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) "In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child [citation]; such presumption obviously applies with even greater strength when the permanent plan is adoption rather than foster care. A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, what is in the best interest of the child." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.)

Mother's efforts to address her long-term substance abuse and parenting deficits are to be commended, but the factual history of this case makes it clear that they will not fully prepare her to take care of her children at any time in the predictable future. "Childhood does not wait for the parent to become adequate." (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310.) And while the children allegedly have expressed that they love and miss their mother, those sentiments would not establish that it is in their best interest to disrupt a successful relative placement and delay their interest in a safe and permanent home.

The court thus properly denied Mother's petition without a hearing. That being the case, there is no reasonable probability she would have prevailed had her attorney

filed a timely notice of appeal. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *In re Kristen H.* (1996) 46 Cal.App.4th 1635, 1668.)

II. Beneficial Relationship Exception

Mother contends the court erred when it declined to find the benefits of her relationship with the children precluded the termination of her parental rights. We review the refusal to make such a finding for abuse of discretion. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)³

If a child is found adoptable at the section 366.26 hearing, the juvenile court must terminate parental rights and place the child for adoption *unless* it finds termination would be detrimental to the child because, inter alia, “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) “To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.] The parent must demonstrate more than incidental benefit to the child. In order to overcome the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment of the child to the parent.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) The child’s relationship with the parent must “promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of

³ While we recognize that other courts have reviewed such a determination to see whether it is supported by substantial evidence (see, e.g., *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228), we will not address the divergence here. As we observed in *In re Jasmine D.*, *supra*, 78 Cal.App.4th at page 1351, the practical differences between the two standards of review in these cases are minimal and not outcome determinative. In this case, beyond any doubt, the result would be the same under either test.

a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Only in extraordinary cases will preservation of the parent's rights prevail over the Legislature's preference for adoption. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.)

This is not a case where the children's relationship to their mother outweighs the well-being they could gain in a permanent adoptive home. We do not question Mother's love for her children, or her recent efforts to attain sobriety and the parenting abilities that have been so sorely lacking in this family's history. But it is clear from the record that Mother was far from ready to parent her children. "[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship." (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) Mother's description of the children's displays of affection during their visits and indications that at times Kelvin and L.R. missed her are thus insufficient to support her claim that her relationship with the children outweighs their need for a safe and permanent home. On the other side of the balance, the children appear to be doing well with their aunt and grandmother. The court's determination was well within its discretion.

III. ICWA

Mother, joined by Israel, argues that the order terminating parental rights must be reversed because the court and Department failed to provide notice required under ICWA. On this point, we must agree.

A. Background

According to the social worker's service log, on February 23, 2014, Mother told the social worker that she believed there was "Crete" and Cherokee heritage in her family but had never pursued it and no family members were registered with a tribe. Mother filled out and signed a Judicial Counsel Parental Notification of Indian Status Form (ICWA-020). She checked box 3.d., "I have no Indian ancestry as far as I know." At the

February 27, 2014 detention hearing her attorney informed the court that “[w]ith regard to ICWA, Mother, in the prima facie, had indicated there may be some Native American ancestry. We filled out the form this morning indicating no Native American ancestry. The only person that the Department could have inquired more about possible Native American ancestry is the grandmother, who has since passed away. And it appears to me that if there’s any ancestry, it’s very attenuated. And Mother, at this point, wasn’t able to identify a tribe. So we’ve indicated no Native American ancestry.” Later during the hearing, counsel for the Department asked if the court “will be making the ICWA finding in light of what’s been represented?” The court responded “Yes.” There is no oral finding on the record, but the minute order indicates the court found that ICWA “may” apply. Yet, it is undisputed that no ICWA notice was provided to any tribe or the Bureau of Indian Affairs (BIA).

B. ICWA Notice Requirements

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. (25 U.S.C. §§ 1901 et seq.; *In re Holly B.* (2009) 172 Cal.App.4th 1261, 1266.) If there is reason to believe a child concerned in a 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.)

“ “Since 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, notice

requirements are strictly construed.”’ [Citations.] The notice requirement applies even if the Indian status of the child is uncertain. [Citation.] 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. [Citation.] A hint may suffice for this minimal showing. [Citation.] ‘The determination of a child’s Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.’ [Citation.] ‘If . . . the court has reason to know the child may be an Indian child, the court shall proceed as if the child is an Indian child.’ ” (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 549.)

The social services agency is also charged with an “affirmative and continuing duty” to inquire into Indian child status. (Cal. Rules of Court, rule 5.481(a); *In re Damian C.* (2009) 178 Cal.App.4th 192, 198–199.) If it has reason to know an Indian child may be involved, it *must* “make further inquiry as soon as practicable by [¶] . . . [¶] (B) Contacting the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership; and [¶] (C) Contacting the tribes and any other person that reasonably can be expected to have information regarding the child’s membership status or eligibility.” (Cal. Rules of Court, rule 5.481(a)(4).) A parent’s representation that he or she lacks sufficient information to determine whether the family has Indian heritage does not release the agency from the obligation to provide notice. (*In re Damian C.*, *supra*, 178 Cal.App.4th at p. 199.)

C. Analysis

The information available to the Department at the detention hearing was sufficient to trigger its inquiry and notice obligations under ICWA. The Department insists it did all that was required because Mother’s Parental Notification of Indian Status Form “positively denied” that she had Indian ancestry. If that were all there were to it, the Department might be right. For example, in *In re A.B.* (2008) 164 Cal.App.4th 832 a court’s noncompliance with the inquiry requirement was held to be harmless error because the parents, like Mother, submitted forms denying any Indian heritage. But here

there is a critical difference. Although Mother submitted a form denying Indian heritage, her counsel explained this was because she had earlier indicated she might have Indian heritage but could not identify a tribe; that the only relative who could provide further information about the family's Native heritage had passed away; and that any connection to a tribe they might have was "very attenuated." Far from an unequivocal disclaimer of Indian heritage, these representations provided reason to know the children might be Indian children and thus triggered ICWA's inquiry and notice requirements.

We are therefore constrained to conditionally reverse the order terminating parental rights for a limited remand, with directions to the juvenile court and the Department to conduct the necessary inquiry and provide proper notice pursuant to ICWA.

DISPOSITION

The juvenile court's order terminating parental rights is conditionally reversed as to Mother and both fathers⁴ for failure to comply with ICWA's inquiry and notice provisions. The case is remanded to the juvenile court with directions to ensure the Department has fully complied with ICWA. If after proper notice the children are found to be Indian children, the juvenile court shall proceed in accordance with all provisions of ICWA. If, however, after appropriate notice no tribe indicates that the children are Indian children within the meaning of the ICWA and the court concludes the Department's efforts at ICWA compliance were adequate, the court shall reinstate the termination of parental rights. The petition for writ of habeas corpus is denied.

⁴ Although Isidro did not appeal the termination of his parental rights, the California Rules of Court, with exceptions not applicable here, forbid the termination of the rights of only one parent under section 366.26. (Cal. Rules of Court, rule 5.725(g); *In re A.L.* (2010) 190 Cal.App.4th 75, 80.) Accordingly, when the termination of the parental rights of one parent is reversed, the termination of the rights of the other parent should be reversed as well.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.