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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re LIAM T. and A.T., Persons Coming  
Under the Juvenile Court Law.

LAKE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MEGAN T.,

Defendant and Appellant.

A146849

(Lake County  
Super. Ct. No. JV320439A  
JV320439B)

Megan T. challenges orders in this dependency action establishing jurisdiction over her son A.T. and placing his brother Liam T. in foster care. She contends there was insufficient evidence to support the orders, and that the dispositional order violates the Indian Child Welfare Act (ICWA). Her contentions are meritless. We affirm.

**BACKGROUND**

*Detention and Jurisdiction*

On May 22, 2015, 13-year-old Liam T. told school personnel that his mother hit and scratched him during an altercation the previous evening. There were numerous scratches around his left eye and on his neck. Megan, who was known to police as an “avid” methamphetamine user, appeared to be under the influence when she arrived at the school with Liam’s younger brother, 11-year-old A. She denied causing Liam’s

injuries and told police that she had last used methamphetamine on about May 18 or 20. Megan was arrested on an outstanding warrant and for being under the influence of a controlled substance.

The Lake County Department of Social Services (the Department) filed a juvenile dependency petition. It alleged that Megan had physically injured Liam on May 21 (Welf. & Inst. Code, § 300, subd. (b)(the b-1 allegations)),<sup>1</sup> that Liam suffered or was at a substantial risk of suffering serious harm due to Megan's unresolved substance abuse (the b-3 allegations), and that alleged father Troy T.'s whereabouts were unknown and he had no contact with Liam in years. (§ 300, subds.(b) & (g) (the b-4 and g-1 allegations).) The petition further alleged that Megan's neglect and abuse of Liam put A. at a substantial risk of abuse or neglect. (§ 300, subd. (j)(the j-1 allegation.) As stated in the b-3 allegations, Liam told social worker Michael Schweitzer that when Megan uses methamphetamine she "stutters, talks really fast, makes fast, jerky movements, is hyperactive, irritable, argumentative, and makes angry outbursts without warning," and that he had seen her inject drugs and observed needles and marijuana in her purse. It was further alleged that Megan was a known methamphetamine user, was arrested for being under the influence on May 22, and admitted having used methamphetamine two or four days before her arrest.

Megan agreed for Liam to stay in the home of family friends Jennifer and Dan D. pending further court orders. The children had stayed with the D.'s in late 2014 when Megan was in Lake County jail, and the D.'s had been assessed as appropriate caregivers. Liam told Schweitzer he felt comfortable and safe with them and that they were willing to care for and adopt him. Liam was afraid of Megan and wanted nothing to do with her or A. The court ordered Liam detained in the D.'s' care but permitted A. to remain with Megan pending the jurisdiction hearing.

The Department's jurisdiction report recommended that Liam stay with the D.'s and A. remain with Megan. Megan had a long history of allegations of child neglect and

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<sup>1</sup> Further statutory citations are to the Welfare and Institutions Code.

substance abuse. In 2002 allegations of general neglect were substantiated in Oklahoma after Megan tested positive for methamphetamine, but she was participating in counseling and court intervention was not recommended. In May 2005 allegations of general neglect and failure to protect were substantiated due to Megan's continual drug abuse and drug-related arrests, and a family maintenance case was opened. In August 2005 there were additional allegations that Liam was left wandering unsupervised outside at 10:00 p.m. and, days later, that Liam brought a baggie of methamphetamine to preschool and drugs, needles and pornography were found at the home. The children were removed under a family reunification plan and remained in out-of-home care until sometime in August 2007.

Megan came to the Department's attention in February 2014 upon reports that she was injecting methamphetamine and A. was heard asking her why she was "tying her arm and poking herself." Megan admitted telling the children she had a problem and to stay out of her purse because her needles could poke them. It was also alleged that the home was unsafe and unsanitary and that Megan habitually left the children unattended. The Department investigation determined that the children had been living with their maternal grandmother for a year due to Megan's ongoing drug abuse. The allegations were found inconclusive.

In November 2014 Megan was arrested and jailed in Lake County. She left the children in the D.'s' care, but told law enforcement that she wanted them placed with their grandmother because she was worried the D.'s would try to become the children's legal guardians. But marijuana plants were being grown in the grandmother's home and grandmother said she could not care for the children. So, they remained with the D.'s until Megan was released. In late December 2014 Liam reported that Megan came home at 2:00 a.m. acting drunk and "stupid," and he later saw sexually explicit material she texted on his phone. There were also reports that a police officer brought the family toilet paper and food and that A. was dirty and inappropriately dressed. Although investigation revealed likely drug abuse and dysfunction in the home, the children said their basic needs were met. Again, the allegations were found inconclusive.

A California Law Enforcement Telecommunications System inquiry revealed Megan's history of drug-related criminal charges and convictions dating back to 2006 and pending charges based on the May 2015 incident.

Liam and A. are enrolled members of the Cherokee Nation tribe in Oklahoma. The Cherokee Nation gave notice that the boys are Indian children through Megan and filed a notice of intervention in the dependency.

A. told social worker Schweitzer that he had no problems with Megan. She treated him well, he felt safe at home, and he was not afraid of her. A. said that Liam frequently argued and fought with Megan, but with Liam gone there was no more fighting.

Liam was interviewed multiple times between May and August. He wanted to stay with the D.'s and have no contact with his mother or brother. He was afraid Megan would hurt him again if he went home. In a two-page written statement, captioned "Brain Storm," Liam listed "bad things" about living with Megan. It included "She is mean most of the time and when she is trying to get me back she lies and acts nice;" "The house is never clean;" "She cusses at me and puts her hands on me;" "She does drugs and gets caught and goes to jail . . . [a]lways and will never stop;" "She text[s] disgusting sex stuff on my phone;" "She's extremely selfish;" "She sleeps during the day a lot;" "She never has money for us;" "She steals;" "She lets her 'boyfriends' steal my clothes and shoes." Liam's list concluded, "I don't ever, ever, ever, want to go back. I will do anything to not go back. Please don't make me go back with Megan." The Department observed that Liam's relationship with Megan was tense and conflictual, but her relationship with A. was positive and protective.

The social worker made numerous unsuccessful attempts to contact Megan between August 18 and September 3, including eight visits to her home, four phone calls and one letter.

The contested jurisdiction hearing was held on September 16, 2015. Cherokee Nation tribal representative Nicole Allison appeared by telephone, stated that the Cherokee Nation was in agreement with the Department's recommendations and asked

for a finding that the Department made active efforts to prevent the breakup of the Indian family.

Megan testified she had been addicted to methamphetamine since she was 14 years old, had last used around May 20, and was currently getting treatment. She fought with Liam on May 21, and it was the only physical altercation they ever had. The boy's scratches were from playing or tussling with A. in some vines earlier that day. Megan did not see Liam's scratches afterward, but his face was red and A.'s arms and legs were scratched. She testified that in the evening she "asked [Liam] to sit down. He refused. He called me a 'cunt,' I believe it was, amongst a few other choice names, like 'drug addict bitch.' And told me you don't—'You think you're big and bad and you're nothing.' And so I put my hand on his shoulder and I sat him on the bed." Then Liam got up, "penned" Megan to the sofa and elbowed her in the face. She did not scratch or push him and she did not see any injuries on him. She had used methamphetamine the previous day and it was still in her system, although she was not feeling its effects at the time.

Megan denied that A. had seen her inject methamphetamine or that she told the children to keep out of her purse because of her needles. She denied the reports that she kept needles in her purse, came home late and drunk, and used Liam's phone to text explicit material. She suffered from depression but had no problems controlling her anger.

Schweitzer testified that on May 22 Megan told him Liam got scratched tussling with A. in the bushes. She did not say anything about putting her hands on Liam's shoulder. Schweitzer saw what looked like fingernail scratches around Liam's right eye, cheek, neck, and chest. A. told him he was in the shower during the fight and did not see it.

The court amended the b-3 failure to protect allegations premised on Megan's drug abuse to include A. and found them true as amended. It also found true the b-1 allegations that Megan physically injured Liam on May 21, the g-1 and b-4 allegations as

to Troy's failure to provide for and protect him, and the j-1 sibling abuse allegation as to A.

### *Disposition*

Nicole Allison submitted a declaration in lieu of oral testimony for the disposition hearing. She stated, "I am an employee of the Cherokee Nation in the capacity of a Child Welfare Specialist. My duties include working with Indian children and their families, intervening on the behalf of the child to determine if their best interest is being served by the social service agencies, courts, and their extended families as to compliance with the Federal Indian Child Welfare Act. I work to coordinate services, attend hearings, and make home visits within the 14 county service area of Cherokee Nation. I also intervene in court cases outside the service area, including all 50 states and remain available to assist in locating appropriate placements of foster homes and adoptive homes for children who are in state custody." "I am currently the Cherokee Nation Indian Child Welfare Specialist assigned to Liam and [A.][T.]. I staff on a regular basis with my supervisor Lou Stretch. The court recognizes me as the tribal representative to this case with all legal notices sent to my attention."

Allison opined that the Department made active efforts to provide services designed to prevent the breakup of the family. She explained that Megan "does have a substance abuse problem and there are clearly issues with the family that need to be addressed. The mother has a history of substance abuse issues including a previous removal in Oklahoma in which Cherokee Nation was actively involved. Due to the allegation and the history of the family, the department was correct in placing Liam in custody and Cherokee Nation is in agreement with the removal. This recommendation is based on interviews with the mother, worker, and relative collateral and review of Lake county documents and reports, the previous case file, and the previous Cherokee Nation worker narratives."

Allison stated the Cherokee Nation of Oklahoma agreed to A.'s remaining in Megan's care "[a]s long as the mother is being protective of [A.] and working services with the department." In her expert opinion, however, placing Liam with Megan would

likely cause him serious physical or emotional damage. Allison acknowledged that the D.'s' home "is not compliant with [ICWA] placement preferences," but that Liam wished to remain with the family, the Cherokee Nation had no tribal home for him in the area, and the closest relative available for placement was in Arkansas. Allison concluded that "Liam needs to remain in the Lake County area for him to work reunification services with his mother. Cherokee Nation is not objecting to his placement at this time."

According to the Department's disposition report, Megan said she was participating in drug counseling and parenting classes but she had not signed consent forms to enable the Department to verify her attendance or progress. She had yelled at Liam from the stand at a recent hearing, was not engaged in counseling to address their relationship, and her failure to participate prevented the Department from completing assessments, service screenings or drug tests. The Department was unaware of any local family who would qualify under ICWA for placement but intended to ask Megan about any such possibilities. Megan had a great aunt in Arkansas, but placement in Arkansas would impair family reunification services. The Department recommended continuing Liam's out-of-home placement with reunification services and providing in-home family maintenance for A.

The juvenile court adjudged both Liam and A. dependents of the court and found by clear and convincing evidence that the circumstances justified removing Liam from Megan's custody. The court ordered that A. remain with Megan with family maintenance services. Megan filed this timely appeal.

## **DISCUSSION**

### *Jurisdiction*

Megan contends the evidence is insufficient to support the jurisdictional findings as to A. under section 300, subdivisions (b)(failure to protect) and (j) (abuse of sibling). She maintains there was no evidence she ever abused or neglected him; that A., at 11 years of age, was old enough to protect himself; that the Department conceded her home did not present a dangerous condition; that A. said there were no problems at home; that neither Liam's complaints about her nor their May 21 altercation evidenced a substantial

risk to A.; and that, in essence, her methamphetamine abuse did not endanger him. We disagree.

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

Here, essentially, Megan is asking us to substitute the court’s assessment of the evidence with our own. The evidence of Megan’s longstanding and unaddressed methamphetamine addiction and related neglect is set out in our preceding discussion of the case background, and we will not repeat it. Suffice it to say that her long history of methamphetamine abuse and failure to care for, supervise, and protect her sons, along with Liam’s recent injuries, amply demonstrated a substantial risk of harm to both children in her care. The court thus properly asserted jurisdiction over A. for Megan’s failure to protect him from harm.

Megan also challenges the sibling abuse finding under section 300, subdivision (j), but there is no valid reason to address her argument. “ “[T]he minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.” [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by evidence.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) Megan argues that each of the court’s jurisdictional findings requires appellate review because each “served as the basis” for the dispositional orders, could “potentially” be prejudicial in later court proceedings concerning A. or hypothetical children Megan might bear in the future, or

could result in her being listed in the Department of Justice's child abuse index. But, except for the ICWA claim we will address below, Megan has neither challenged the dispositional orders in this appeal nor shown any reason why reversing the subdivision (j)-1 finding while affirming juvenile court jurisdiction under subdivision (b) would affect them. None is apparent. Megan's suggestion of "potential" prejudice is nothing more than speculation, which we decline to address.

#### *Disposition*

Megan argues the court's decision to place Liam with the D.'s, a non-Indian family, violates ICWA's placement preferences without evidence of good cause to deviate from them. The argument is meritless.

"To meet its goal to place children in foster or adoptive homes which reflect the unique values of Indian culture, ICWA establishes placement preferences for Indian children who have been removed from their families. (25 U.S.C. §§1902, 1915(b); §361.31.) An Indian child in foster care must be placed in the least restrictive setting that most approximates a family . . . within reasonable proximity to his or her home, taking into account any special needs of the child.' (25 U.S.C. §1915(b); see Welf. & Inst. Code, §361.31, subd. (b).)" (*In re Anthony T.* (2012) 208 Cal.App.4th 1019, 1027.) Preference for the child's placement goes, in descending order, to "(1) A member of the child's extended family . . . (2) A foster home licensed, approved, or specified by the child's tribe. (3) An institution for children approved by an authorized non-Indian licensing authority. (4) An institution for children approved by an Indian tribe or operated by an Indian organization. . . ." (§ 361, subd. (b); see also 25 U. S.C. §1915; *In re Anthony T.*, *supra*, at p. 1029.)

Megan argues Liam's placement with the D.'s violates these preferences. She suggests the court was required to place Liam with a Cherokee extended family member or, at a minimum, to require further inquiry into the availability of such placement. We disagree. ICWA expert and tribal representative Nicole Allison testified that Liam's closest relative was in Arkansas, so it was not possible to place Liam with an Indian family member without violating the threshold requirement that the child's foster

placement be “within reasonable proximity” to his or her home. (See *Anthony T.*, *supra*, 208 Cal.App.4th at pp. 1029–1030 [the “ ‘ reasonable proximity’ requirement is mandatory. . . .”].) Megan quibbles that Allison’s declaration was made to the best of her knowledge and belief and that it “failed to specify the source of the purported facts upon which she relied.” In short, she challenges the strength of the evidence and asks this court to adopt her assessment of it over that of the trial court. We may not do so. Allison’s written testimony discloses a deep knowledge of Cherokee history, culture and customs; child welfare issues generally and specifically as concerning the children’s tribe; and ICWA. She is a member of the Cherokee Nation of Oklahoma, is the tribe’s representative on their case, regularly staffs it with her supervisor, and made her recommendations based on interviews with Megan and the caseworker as well as the current and prior case files and prior Cherokee Nation worker narratives. The trial court reasonably credited her testimony, and it is beyond our purview to disturb its assessment.

Megan’s premise that the disposition violates the statutory placement preferences because there was no evidence the D.’s’ home is “a foster home licensed, approved, or specified by the child’s tribe” pursuant to section 361.31, subdivision (b)(2) also fails under substantial evidence review. Allison was, as previously noted, the Cherokee Nation Indian Child Welfare specialist and court-recognized tribal representative on Liam’s and A.’s case. Her testimony established that she was knowledgeable about the relevant facts and circumstances, including Liam’s desire to remain with the D.’s and the lack of any relative or tribal homes close enough to Megan’s home to support reunification efforts. She unequivocally stated that the Cherokee Nation did not object to placing Liam in foster care with the D.’s to facilitate reunification. “ICWA must be liberally construed in favor of the policy to defer to tribal judgment in Indian child custody matters.” (*In re Anthony T.*, *supra*, 208 Cal.App.4th at p. 1029.) Absent any indication that the words “approved” or “specified” have some special meaning within the context of the placement preference statutes, and we have found none, we must give those words their ordinary, everyday meaning. (See *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.) So defined, Allison’s testimony provides

substantial evidence that the tribe approved or specified Liam's placement with the D. family pursuant to section 361.31, subdivision (b)(2).

Megan tries to undermine Allison's statement that the tribe did not object to the placement by asserting Allison did not represent the Cherokee Nation in the proceedings; that she never specifically testified (and it was not otherwise shown) that her supervisor or the tribal council authorized her statement; and, thus, in essence, that it was nothing more than her personal opinion. These arguments are contradicted by Allison's testimony that she was the tribal representative to the case, which the court could reasonably infer included the authority to represent the tribe's views on foster placement. The disposition order is thus supported by substantial evidence.

Megan also makes passing comments that the Department failed to make the active efforts required to prevent the breakup of an Indian family but, upon inspection, those comments simply reiterate her claim that it did not adequately search for a foster placement that complied with ICWA's placement preferences. In view of our conclusion that Liam's placement complies with ICWA, we will not address this claim.

#### **DISPOSITION**

The juvenile court's orders are affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.