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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.B., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

A147442

(Alameda County
Super. Ct. No. OJ14023612)

In this juvenile dependency proceeding, J.S., mother of A.B. (the child), appeals from a January 14, 2016, order entered after a contested hearing to determine the permanent placement of the child. (Welf. & Inst. Code¹, § 366.26). The juvenile court found the child was likely to be adopted, and terminated the parental rights of both parents. On appeal mother seeks reversal of the order on the sole ground that the juvenile court did not comply with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA). Specifically, mother argues the ICWA notice sent to the Cherokee tribes failed to reflect that the child’s biological father had been adjudicated the child’s presumed father. We conclude mother has failed to demonstrate the claimed deficiency in the ICWA notice was prejudicial error. Accordingly, we affirm.

¹ All unspecified statutory references are to the Welfare and Institutions Code.

FACTS²

In October 2012, this juvenile dependency proceeding was commenced in the Sonoma County Superior Court by the filing of a section 300 petition by the Sonoma County Human Services Department. Two years later, on October 14, 2014, after mother had changed her residence, Alameda County Superior Court accepted transfer of the juvenile dependency proceeding. Based on the parents' notices that mother might have unspecified Indian ancestry and father might have Cherokee ancestry, the court directed the agency to comply with ICWA notice requirements and the matter was continued to October 21, 2014.

Before the continued hearing, the agency sent a ICWA-030 form notice to the Sacramento Area Director of the Bureau of Indian Affairs (BIA), the Secretary of the Interior of the United States Department of the Interior, the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians in Oklahoma.³ Question five, labeled "Information on the Child Named in 1," asked the agency to supply certain information concerning the child. Paragraph a. asked if the child's birth certificate is "attached" or "unavailable," to which the agency reported the document was unavailable. Paragraph c. asked the agency to supply, if known, certain biological relative information as "required" by "section 224.2."

² Because mother limits her appeal to the adequacy of the ICWA notice sent to the Cherokee tribes we set forth only those facts relevant to the issue. Additionally, mother "did not forfeit" review of "any" deficiency in the ICWA notice by failing to raise the issue in the juvenile court. (*In re S.E.* (2013) 217 Cal.App.4th 610, 615.) "[G]iven the court's continuing duty throughout the dependency proceedings to ensure the requisite notice is given [citation], and the protections the ICWA affords Indian children and tribes, the parents' inaction does not constitute a waiver or otherwise preclude appellate review." (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 251; see also *In re Isaiah W.* (2016) 1 Cal.5th 1, 11 (*Isaiah W.*), citing with approval *Dwayne P.*)

³ "Section 224.2 codifies and elaborates on ICWA's requirements of notice to a child's parents or legal guardian, Indian custodian, and Indian tribe, and to the BIA. In addition to requiring notice to the BIA 'to the extent required by federal law,' the statute requires any notice sent to a child's parents, Indian custodians, or tribe to 'also be sent directly to the Secretary of the Interior' unless the Secretary has waived notice in writing. (§ 224.2, subd. (a)(4).)" (*Isaiah W., supra*, 1 Cal.5th at p. 9.)

In response, the agency reported the known information about the child's biological father and his relatives under the headings "Biological Father," "Father's Biological Mother (Child's Paternal Grandmother)," "Father's Biological Father (Child's Paternal Grandfather)," "Father's Biological Grandmother (Child's Paternal Great-grandmother)," and "Father's Biological Grandfather (Child's Paternal Great-grandfather)."⁴ Question six, labeled "Additional Information on Child Named in 1," asked the agency to indicate (by marking appropriate boxes) if the following information was known or unknown: "a. Biological birth father is named on birth certificate. Unknown [¶] b. Biological birth father has acknowledged parentage. Unknown [¶] c. There has been a judicial declaration of parentage. Unknown [¶] d. Other alleged father (*name each*): [¶] Unknown." The agency marked "Unknown" as to Paragraphs a., b., and c., and reported "No information available" as to other alleged fathers. By a letter dated October 20, 2014, the agency received a response from the United Keetoowah Band of Cherokee Indians in Oklahoma, stating that "[w]ith the information you supplied us, a search of the United Keetoowah Band of Cherokee Indians in Oklahoma enrollment records was conducted. There is no evidence that supports that above reference child(ren) is/are descendants from anyone on the Keetoowah Roll, therefore; I.C.W. of the United Keetoowah Band of Cherokee Indians in Oklahoma will not intervene in this case."

At the October 21, 2014, hearing, the Alameda County Superior Court declared father to be the legal, as well as the presumed father of the child. The court directed the agency to investigate if the child was an Indian child and the agency was directed to provide ICWA notice to the appropriate parties. The agency did not send a new ICWA notice to the tribes reflecting that the juvenile court had declared father the presumed

⁴ Specifically, the ICWA notice informed the tribes: (1) legal name, alias, former addresses, birth date and place, and tribe or band, and location, of biological father; (2) name and birth date and place, of father's biological mother (child's paternal grandmother); (3) name, current address, former address, birth date and place, and tribe or band, and location, of father's biological father (child's paternal grandfather); (4) name, maiden name, current address, former address, birth date, tribe or band, and location, of father's biological grandmother (child's paternal great-grandmother), and (5) name of father's biological grandfather (child's paternal great-grandfather).

father of the child. Thereafter, the agency received signed domestic return receipt forms acknowledging receipt of the ICWA notice sent to the tribes before the October 21, 2014, hearing. And, on November 7, 2014, the agency received a letter from the Eastern Band of Cherokee Indians, indicating the child “is not considered an ‘Indian child.’ ”

At the section 366.26 hearing held on January 14, 2016, the court noted that on August 13, 2015, it had found the child was not an Indian child and no further ICWA notices were required based on the following: “The mother and father indicated that there may be Indian ancestry. ICWA 030 notices were sent to the Tribes and the Bureau of Indian Affairs. Responses from the Bureau of Indian Affairs and the Tribes were received and filed with the Court.”

DISCUSSION

On appeal mother contends the juvenile court failed to ensure compliance with ICWA because the Cherokee tribes were not sent a ICWA notice reflecting that the child’s biological father had been judicially declared to be the child’s presumed father. We disagree.

ICWA and California law define an “ ‘Indian child,’ ” as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903(4); see § 224.1, subd. (a).) Additionally, ICWA defines a “ ‘parent’ ” as “any biological parent or parents of an Indian child [‘Parent’] does not include the unwed father where paternity has not been acknowledged or established.” (25 U.S.C. § 1903(9).) “An alleged father may or may not have any biological connection to the child. Until biological paternity is established, an alleged father’s claims of Indian heritage do not trigger any ICWA notice requirement because, absent a biological connection, the child cannot claim Indian heritage through the alleged father.” (*In re E.G.* (2009) 170 Cal.App.4th 1530, 1533.)

It is also well settled that “[i]f the notice duty is triggered under ICWA, the notice to a tribe must include a wide range of information about relatives, including grandparents and great grandparents, to enable the tribe to properly identify the children’s

Indian ancestry. [Citation.]” (*In re J.D.* (2010) 189 Cal.App.4th 118, 124.) To that end, “[b]oth the federal regulation [25 C.F.R. § 23.11(d)(3)] and section 224.2, subdivision (a)[(3)] require the social services agency to provide as much information as is known concerning the child’s direct lineal ancestors, including all the names of the child’s biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as the current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known. [Citations.]” (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 575, fn. 3.) “Notice requirements are strictly construed and notices ‘must contain enough information to be meaningful. [Citation.]’ [Citations.] Our role is to assess prejudice from any error. [Citation.]” (*In re Z.N.* (2009) 181 Cal.App.4th 282, 302.)

In this case, there is no question but that the ICWA notice information concerning the child’s biological birth father and his relatives was sufficient to allow the Cherokee tribes to search their genealogical records to determine if the child could claim Indian heritage through the biological birth father and his relatives. (See *In re Louis S.* (2004) 117 Cal.App.4th 622, 631.) Mother complains, however, that because the biological birth father was an unwed father, the ICWA notice also had to include his known parentage status, which was marked as “unknown” on the ICWA notice sent to the tribes. As we now explain, we conclude the omission of the biological birth father’s parentage status was not prejudicial.

According to mother, a ICWA notice is prejudicially deficient if it omits a biological father’s parentage status because the tribe will assume the father is not a parent under ICWA and therefore it will not search its genealogical records to determine if the child could claim Indian ancestry through the biological birth father and his relatives. However, an agency’s notification that a biological birth father’s parentage status is unknown does not inform a tribe that father is not a parent under ICWA, but only that he cannot be ruled out as a parent under ICWA. Thus, we see no merit to mother’s speculative argument. And, indeed, the record in this case supports our conclusion. As we have noted, despite the purportedly deficient ICWA notice in this case, the response

of the United Keetoowah Band of Cherokee Indians in Oklahoma indicated the tribe searched its enrollment records and found no evidence that would support a determination that the child is a descendant from anyone on the Keetoowah Roll. In so responding, the tribe did not indicate that its genealogical search was in any way limited or hindered by the fact that the tribe did not then know the biological birth father's parentage status. (See *In re D.N.* (2013) 218 Cal.App.4th 1246, 1252 [court upheld adequacy of ICWA notice, finding, among other things, that in its response the tribe did not request any additional information or recite a disclaimer that the lack of information might have hindered its genealogical search].) Because the ICWA notice was otherwise sufficient to allow the Cherokee tribes to search their genealogical records to determine the child's claim of Indian ancestry through the biological birth father and his relatives, we conclude the ICWA notice's omission of the biological birth father's parentage status was harmless. (See *In re E.W.* (2009) 170 Cal.App.4th 396, 402-403 ["where notice has been received by the tribe . . . errors or omissions in the notice are reviewed under the harmless error standard"]; *In re I.G.* (2005) 133 Cal.App.4th 1246, 1252 ["[s]ubstantial compliance with the notice requirements of ICWA may be sufficient under certain circumstances".]) The cases cited by mother do not require a different result.

DISPOSITION

The January 24, 2016, order is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.