

Filed 2/19/13 In re A.S.

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSEPH C. et al.,

Defendants and Appellants.

B238351

(Los Angeles County  
Super. Ct. No. CK89261)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Appeal dismissed.

Lee Gulliver, under appointment by the Court of Appeal, for Defendant Appellant, Tiffany S.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant, Joseph C.

No appearance for Respondent.

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In this matter, appellants Joseph C. (father) and Tiffany S. (mother) have appealed<sup>1</sup> from a judgment declaring their child, A. S., a dependent of the court and an from an order removing him from their custody. They contend that the trial court erred in failing to ensure that the Department of Children and Family Services (DCFS) had complied with the inquiry and notice provisions of the Indian Child Welfare Act of 1978, title 25 United States Code section 1901 et seq. (ICWA). DCFS concedes that it did not comply with the ICWA notice and related proceedings requirements. Appellants, relying on such circumstance, seek reversal of the judgment and the dispositional order and the remand of the case with instructions that the trial court order DCFS to comply with ICWA's notice and inquiry provisions.

***FACTUAL AND PROCEDURAL BACKGROUND***<sup>2</sup>

DCFS originally filed a petition on August 9, 2011 on behalf of A. S. alleging he was at risk of abuse and harm due to his parents' history of domestic violence, including a recent altercation in which "father violently assaulted mother," striking her face and strangling her. The trial court found that DCFS had presented a prima facie case and ordered A. S. detained. In its detention report, DCFS reported that mother stated her maternal great-great grandmother was either one-third or one-half Soboba Indian and

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<sup>1</sup> Father specifically seeks reversal of the dispositional order but joins in mother's briefs. She seeks reversal of both the trial court's finding of jurisdiction over A. S. and the dispositional order.

<sup>2</sup> The factual and procedural background was taken from the record which consists of a two-volume Clerk's Transcript and a one-volume Reporter's Transcript.

provided the name, Grace Trujillo, and a potential tribal enrollment number. The trial court found that ICWA may apply and ordered DCFS to investigate further.

DCFS filed an amended petition on September 20, 2011, alleging that A. S. was at risk of severe physical harm due to father's history of physical abuse of his prior girlfriend's children from another relationship, Justin and Au.<sup>3</sup> When Justin was only four years old, father assaulted him resulting in the boy's sustaining black eyes and a broken arm. Father also caused Au., who was only two years old, to sustain a contusion to her head. Father and the prior girlfriend shared a daughter, Cecilia C.,<sup>4</sup> who was only six months old when Justin and Au. were injured. Cecilia was diagnosed with failure to thrive and was also detained. Father was convicted of a felony as a result of this abuse. He also failed to reunify with Cecilia, A.'s half sister. The trial court dismissed the original petition.

On November 9, 2011, the trial court sustained the first amended petition with respect to father's history of child abuse. On December 7, 2011, the trial court declared A. S. to be a dependent of the court pursuant to Welfare and Institutions Code<sup>5</sup> section 300, subdivision (b), and removed him from his parents' custody.

Appellants timely appealed. We granted DCFS's motion for judicial notice of a minute order entered by the trial court on June 6, 2012, subsequent to appellants'

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<sup>3</sup> Neither of these children is a party to this appeal. The record identifies them only by their first names.

<sup>4</sup> Cecilia is also not a party to this appeal.

<sup>5</sup> Unless otherwise stated herein, all statutory references are to the Welfare and Institutions Code.

filing their notices of appeal, in which the trial court released A. S. to the custody of appellants, under DCFS supervision, conditioned on continued participation in court-ordered programs. That motion was granted on July 11, 2012 pursuant to Evidence Code section 452, subdivision (d).

### ***CONTENTION***

Appellants contend that the trial court erred in failing to ensure that DCFS complied with the inquiry and notice provisions of ICWA. They argue that such failure was jurisdictional error requiring reversal of the finding of jurisdiction and of the dispositional order removing A. S. from their custody.

### ***DISCUSSION***

Because the issue on appeal concerned only the DCFS's admitted failure to comply with ICWA and the required related proceedings, we were prepared to remand this matter so that the trial court might address the ICWA issues. However, on December 6, 2012, the trial court entered an order terminating jurisdiction and directing that A. S. be returned to appellants' custody.<sup>6</sup> In light of such circumstance, the appeal by appellants has become moot. (See *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330 [upon termination of trial court jurisdiction, there is no longer an ongoing dependency proceeding to be impacted by an appellate court order]; *In re Jessica K.* (2000) 79

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<sup>6</sup> We were first advised of this trial court action by DCFS on December 28, 2012 again by the supplemental letter brief of DCFS dated January 29, 2013. Neither mother nor father takes issue with the fact of the trial court action although there is a dispute as to its legal consequences. Indeed, in her supplemental brief, mother states that she "does not object to the dismissal of her appeal at this time." Father, however, argues that a dismissal of the appeal for mootness would be inappropriate.

Cal.App.4th 1313, 1315-1316 [when no effective relief can be granted, an appeal is moot and will be dismissed].)

Father's contention that this court should nonetheless retain jurisdiction and order the trial court to comply with the ICWA provisions is without merit. Upon the termination, there is no pending dependency proceeding upon which our ruling could act. The cases relied upon by father involve circumstances where a dismissal for mootness could impact "subsequent proceedings" due to the resulting failure to resolve the issues raised in the dismissed case. That is most certainly not the situation here. The only issue raised in this appeal is related to a determination as to compliance with ICWA and the requirement of investigation into whether the minor child was a member of an Indian tribe. This now is not a relevant issue since the trial court has terminated its jurisdiction. There is no present issue as to "subsequent proceedings.

In any event, as DCFS noted in its brief, "[i]t seems apparent that an [alleged] Indian family can make inquiries with the applicable tribe to determine whether the children are eligible for enrollment in the tribe. In this case, Mother claimed to be a Soboba Indian at the outset of the case, giving the name of the Indian relative and claiming that the child's maternal great grandmother was either one-third or one-half Indian. [¶] This family is now free from juvenile court supervision, and the parents can determine their American Indian heritage without DCFS's inquiries and further interference in their lives."

***DISPOSITION***

The appeal is dismissed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.