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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TRINITY J., a Person Coming Under  
the Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROLE E. et al.,

Defendants and Appellants.

B238993

(Los Angeles County  
Super. Ct. No. CK75383)

APPEAL from order of the Superior Court of Los Angeles County, Amy Pellman,  
Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for defendant and  
Appellant Carole E.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and  
Appellant Richard J.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County  
Counsel, and Navid Nakhjavani, Associate County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Carole E. (Mother) and Richard J. (Father) appeal from an order terminating parental rights to their child, Trinity J. We conclude that the parents did not establish the beneficial relationship exception to termination of parental rights (Welf. & Inst., Code § 366.26, subd. (c)(1)(B)(i))<sup>1</sup> applied. They could not show that they had regular visitation and contact with Trinity, or that Trinity would benefit from continuing the parent-child relationship. We also find that there was no violation of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) We affirm the order terminating parental rights.

## FACTUAL AND PROCEDURAL HISTORY

*Detention and Petition:* On September 5, 2009, the DCFS responded to a referral alleging that five-year-old Trinity J. was a victim of Mother's general neglect and emotional abuse. Mother was brought to the emergency room because she was irrational, anxious, paranoid, and crying. Mother did not feed Trinity, who was always hungry. Mother was on multiple medications for back pain and seizures. Mother had medications in a locked box; Trinity would take the key and give it to Mother if Mother gave her food. Mother reported that Father also had pain issues and stole her medication. During the previous two years, Mother had been seen in the hospital on four occasions for psychiatric issues. Mother also had an outstanding warrant in Riverside County for willful child cruelty dating from February 2008, and a three-year restraining order prohibiting her from contacting, harassing, or disturbing Trinity.

On September 6, 2009, a CSW and police officers went to Mother's home. The door was ajar and the CSW and police entered and observed trash and clothes piled everywhere inside. Mother was passed out in her bed. Trinity was not present. They woke Mother, who was shaking and whose eyes rolled back into her head. It took several minutes for her to become lucid, and Mother gave several answers as to where Trinity was. More than 12 bottles of pain, seizure, and psychiatric medications, including Vicodin, were

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<sup>1</sup> Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

within reach of a small child. Lighters were on the floor in a bedroom Trinity shared with Chante, her adult sibling.

The CSW and police officers went to paternal uncle David J.'s home, where Trinity was present. Aunt Rowan Y. stated that Chante had dropped Trinity at their house. Trinity said she could not wake Mother up, she was alone, and called Father. Trinity reported that because Mother was usually asleep, she had to prepare her own meals, consisting of peanut butter and Captain Crunch cereal. Aunt Rowan stated that until Father went into rehab, he lived in her home in a converted garage, where the CSW observed dozens of empty Bud Light cans. Aunt Rowan stated that Mother's mental health deteriorated, she took too many pills, she was being evicted, and Mother had left Trinity to care for herself. Trinity said she wanted to be placed in the home of her Aunt Rowan and Uncle David. Rowan and David said they would like to take custody of Trinity.

On September 9, 2009, Father stated that he had been living in a sober living facility for four months and was clean.

On September 10, 2009, the DCFS filed a section 300 petition alleging that Trinity was described by section 300, subdivision (b). The first count alleged that Mother had mental problems, including anxiety disorder and panic attacks, and physical problems that rendered her unable to provide regular care of Trinity. On September 5, 2009, and other occasions, Mother failed to manage her medication, lost consciousness, and was hospitalized while Trinity was under her care. Mother's mental and physical problems endangered Trinity's health and safety. A second count alleged that Father had a history of substance abuse that rendered him incapable of providing regular care for Trinity and endangered Trinity's physical and emotional health and safety.

On September 10, 2009, the juvenile court found that prima facie was established to detain Trinity as a person described by section 300, subdivision (b), and ordered Trinity detained and placed in the custody of the DCFS. The parents were to have monitored visits a minimum of three times a week for three hours each.

*Adjudication and Disposition:* Mother admitted she was diagnosed with depression and she had suffered panic attacks. Mother said she was currently on Lorazepam, Xanax, and Trazadone, and in 2009 was hospitalized three times for a panic attacks and twice for back pain. Mother confirmed that she left the hospital on September 5, 2009, before hospital staff diagnosed or officially released her. Mother said Father had a history of alcohol abuse but she was not sure if he was presently abusing alcohol or pain medication he took for a back problem.

Father said Mother had problems with prescription medication, needed help, and had been hospitalized for psychiatric problems. Father admitted abusing alcohol and prescription medication, but said he had been clean for 200 days. Father admitted relapsing between December 2008 and September 2009. Father was at a VA rehab center in Santa Monica and was considering a rehab center in Acton.

Trinity's adult sibling, Chante E., said Mother was doing relatively well and the family's home was relatively stable. Some mornings, however, Mother was groggy because she took Trazadone. Chante believed Mother self-medicated and suffered from many physical and emotional problems that did require medication.

Paternal Aunt Rowan said Mother and Father had abused prescription medication for quite some time. She said Mother believed that if a drug was prescribed it was okay for her to take it.

On April 7, 2010, the juvenile court sustained the allegations of the petition, found Trinity was a person described by section 300, subdivision (b), declared her a dependent child of the juvenile court, removed custody from the parents, and placed Trinity in the custody of the DCFS. Mother was ordered to attend random drug testing, parent education, and individual counseling. Father was ordered to attend drug rehabilitation with random drug testing, parent education, conjoint therapy with Trinity, individual counseling, and Narcotics Anonymous/Alcoholics Anonymous.

*Six-Month Review:* As of October 6, 2010, Trinity was placed in the home of her paternal Uncle David and Aunt Rowan.

Mother and Father lived together in a rented room of a house, and refused to allow a CSW to assess their living situation. Mother visited semi-regularly with Trinity, but allowed her personal difficulties with caregivers to prevent her from having regular visits with Trinity. Mother had not begun individual therapy and missed two random drug tests in this review period. Mother arrived late to a visit and behaved inappropriately during visits, and visits were terminated when Mother became angry or arrived intoxicated or overmedicated. By July 8, 2010, Mother's visits had improved. Aunt Shelley L., who monitored visits, stated that she had not observed a strong attachment or a "true bond" between Mother and Trinity. Although Mother loved Trinity, there was a sense of disconnect in their interactions.

Father participated in an outpatient drug rehabilitation program, random drug testing, individual counseling and a parent class, and visited regularly with Trinity. On July 1, 2010, however, Father was binge-drinking for a week until he checked himself into an inpatient detox facility, and missed two visits while "detoxing." Father had tested positive for alcohol on a random drug test and missed two tests during this period. Father's visits with Trinity were reportedly good.

Trinity lived with her paternal uncle and aunt, David J. and Rowan Y., who were interested in adoption or legal guardianship if reunification failed.

In the October 6, 2010, hearing, the juvenile court found that Mother and Father were in partial compliance with the case plan, ordered the DCFS to provide family reunification services, and set the matter for a 12-month review hearing.

*12-Month Review:* Mother and Father lived in a mobile home park. Mother was prescribed medications for epilepsy, seizure disorder, ADHD, and back pain. Mother attended three individual therapy sessions and random drug testing. The quality of her visits with Trinity remained poor.

Father was diagnosed with back pain and was prescribed pain medication. Father attended a drug rehab program, complied with random drug testing, and visited Trinity. Father, however, had not provided written verification of his participation in a drug rehab

program, and the CSW had not received a letter from Father's therapist about his participation in individual counseling.

During monthly home visits, the CSW observed that Trinity and her caregivers had a strongly bonded, nurturing, supportive, loving relationship.

The caregivers reported that throughout the previous year the parents were consistently 20 minutes late to scheduled visits and missed visits regularly due to sickness or conflicting appointments. Aunt Shelley continually had to remind Mother to visit with Trinity. Mother tended to talk with the monitor instead of visiting her daughter. Father did not take on a parental role during his visits, and instead played and interacted with Trinity as a "fun dad." Father relinquished discipline responsibility to caregivers during visits. The monitor reported that during visits it was easy for Mother and Father to be overly giving and let Trinity have her way, and if discipline were required the parents leaned toward catering and giving in to Trinity.

The monitor, Aunt Shelley L., reported that the parents were good about cancelling visits, but not about making plans for visits. Aunt Shelley assessed the quality of Mother's visits as 4 on a scale of 1-to-10. Mother tried to be more "one-on-one" with Trinity, but still appeared to be going through the motions and did not seem heartfelt or motherly. Aunt Shelley assessed Father as the "fun dad," but activities were not conducive to him being more fatherly or parental.

The 12-month review hearing on January 25, 2011, the juvenile court found that Mother and Father had not complied with the case plan, had not made significant progress in resolving the problems that led to Trinity's removal from the home, and had not consistently and regularly contacted and visited with Trinity. The juvenile court further found that the parents had not demonstrated the capacity and ability to complete the objectives of their treatment plans and to provide for Trinity's safety, protection, physical and emotional well-being, and special needs, and that there was not a substantial probability that Trinity would be returned to the parents' custody within the next review period. The juvenile court ordered family reunification services terminated for Mother and Father, and set the matter for a section 366.26 hearing.

*Section 366.26 Hearing:* In early 2011 Father missed and cancelled visits with Trinity.

On April 22, 2011, Mother was arrested for driving under the influence.

The DCFS had not received proof of Father's sobriety or of random drug and alcohol tests. Father was not formally admitted to the Turning Point Outpatient program due to his lack of attendance since he inquired about the program on May 23, 2011. During this case Father had a pattern of relapsing, entering a detox program, and brief periods of sobriety, but had not shown sobriety for more than a few months.

Father had no visits during March 2011, and since April 2011, his attendance at visits was sporadic and he often cancelled because he felt sick or did not have a ride. The caregivers stated that during visits Father did not take responsibility for Trinity and only had fun with her. The caregivers had to remind him to discipline and feed Trinity, read to her, or get her bath ready. Father did not ask about Trinity's schooling or any basic needs he could help with. Aunt Shelley stated that Father had not considered the level of responsibility required to care for Trinity on a daily basis.

Mother had not attended or been in contact with her rehab program since the first week of June 2011. She tested positive for alcohol and an opiate-based medication she had obtained from a physician. Her counselor stated that Mother was "med-seeking," reportedly due to Mother's recent loss of her teaching license and to breaking her arm while roller skating during a monitored visit on May 28, 2011.

Trinity had lived with Uncle David and Aunt Rowan since October 2009, was thriving in their care, and was bonded with them. Uncle David and Aunt Rowan had applied to adopt Trinity, and an adoption home study for them was approved on June 15, 2011.

In August 2011 Mother lived at a sober living facility. She was not employed and her teaching certificate was recently revoked. Mother failed to attend an IEP annual reassessment meeting for Trinity in May 2011, and after requesting an IEP amendment meeting in June 2011, failed to attend the amendment meeting. Mother provided no documentation of her current participation in any program.

Father was unemployed, received SSI benefits, and lived in a rented room in his sister's home. He provided no proof of participation in a rehab program or counseling, and his current compliance and sobriety were unknown. Father visited with Trinity sporadically, cancelled visits frequently, and the quality of his visits continued to be poor. Father did not take responsibility for the care of Trinity and only played or had fun with her. His parental role in visits was minimal and his interactions were more friendly, fun, and superficial. Father was back in detox between August 12 and 16, 2011.

Mother and Father were cited for drinking in public on July 16, 2011.

Paternal Aunt Shelley observed Mother intoxicated while visiting Father on September 17, 2011, after she had cancelled her visit scheduled for earlier that day, claiming illness. On September 18, 2011, Mother left voicemails in which she slurred her words, rambled, was angry and accusatory, cursed and made hurtful statements toward her adult daughter, and threatened to kill herself if she lost Trinity. The CSW assessed Mother as intoxicated and under the influence.

At the October 3, 2011, permanency planning hearing, Trinity testified that Father visited her at her aunt's house where she lived. They played board games or Legos or watched movies, and sometimes Father made macaroni and cheese or "special" sandwiches. Trinity liked seeing Father and would like seeing him more. Trinity said that Father had never helped her with her schoolwork, an assignment or project and had not helped her pick out clothing. She said she would feel sad if she were not able to visit with Father, who took care of her, did "super nice things" for her, and bought her presents. They talked about fun things. Trinity could not remember if Father had ever come to her school. She felt happy when visits ended, but sometimes felt sad if she wanted to spend more time with Father. Trinity thought living with Father would be "pretty fun."

Trinity liked visits with Mother. She and Mother did fun things like going to the park or to Chuck E. Cheese. Sometimes she talked with Mother about school and things she was studying. Mother, however, had never come to Trinity's school. She felt that once a week visits with Mother were enough, although sometimes wanted more visits with her. She said she would feel sad if she were not allowed to visit Mother any more.

Trinity did not know if she had a special relationship with Father. She felt “kind of weird” about living with Mother, because when she lived with her mother when she was five years old there were cockroaches that would come when food was left out. Trinity stated that of all the people in the world she had the best relationship with her aunt, her uncle, and her sister. Trinity said she liked her home with her aunt, uncle, and sister, and wanted to stay there.

Father testified that during visits, he cooked dinner for Trinity, helped her with her homework, read to her, brushed her hair, and tucked her into bed for the night before he left. Father testified that he helped Trinity with her math and to read and pronounce words. They also went to the park, Chuck E. Cheese, and to the movies. Father admitted that he had missed visits with Trinity when he was not feeling well. He estimated that he missed nine visits in September 2011 and missed at least 11 visits in August 2011. Father also admitted he had never attended an IEP meeting for Trinity, and was not sure who Trinity’s teacher was.

Father said Trinity called him “Daddy” and “Dad,” and confided her feelings to him. When she misbehaved, Father disciplined Trinity by warning her not to do it again, and if it happened again he gave her “a time out.” Father testified that he had been to Trinity’s school for a Christmas play when she was in the first grade, and a second time for a play about the three blind mice. Father believed that he and Trinity had “a very nourishing relationship.”

Mother testified that she had been involved in Trinity’s educational development during kindergarten and first grade, but not as much the previous year, when Mother had difficulty communicating with Trinity’s teacher and a restraining order prohibited Mother from being near Trinity. During the previous year she was not able to participate in Trinity’s educational development, and did not know how Trinity was progressing. When Trinity said hurtful, inappropriate things, Mother said that she changed the subject. When it was necessary to discipline Trinity, Mother would “redirect” her. Mother characterized the visits as fun, and stated that many times Trinity did not want to go home at the end of visits. At times Trinity cried when a visit ended.

A CSW observed Mother's call to Trinity on December 8, 2011. Trinity asked to end the call. After the call, Trinity told the CSW that another time Mother called and told her "I'm going to get you back." Asked what she thought this meant, Trinity said, "Like stealing, she's going to take me." The CSW asked Trinity what she wanted to happen, and Trinity said, "I want my Auntie Rowan and Uncle Dave to adopt me. They keep me safe." Trinity appeared concerned and scared that Mother would take her.

Mother and Father continued to miss visits in November and December of 2011 and in January 2012.

The juvenile court heard testimony from Trinity's caretaker and prospective adoptive parent Rowan Y., who monitored Father's visits with Trinity. During those visits, Trinity and Father played and had a good time, but Father did not help Trinity with her homework and besides playing did no other activities with Trinity. Rowan did not recall that Father ever asked about Trinity's school, although he attended a parent-teacher conference in 2011 and attended Trinity's school carnival. Father also attended movies at the school on Friday nights. Father had not attended Trinity's doctor's or dentist's appointments. Rowan stated that Trinity looked forward to visits with Father, loved him, and they had a great time when they were together, but theirs was not a typical parent-child relationship. Rowan stated that Trinity looked to her and uncle David to parent her, for permission, and for everyday needs.

The juvenile court found that Trinity was adoptable, and had preadoptive parents ready and willing to adopt her. The juvenile court found that it would be detrimental to Trinity to return her to her parents. The juvenile court found that while Trinity loved Mother and Father, they did not meet the burden required under the beneficial relationship exception of section 366.26, subdivision (c)(1)(B)(1). The juvenile court ordered parental rights of Richard J. and Carole E. terminated, ordered adoption as Trinity's permanent plan, and transferred custody and control of Trinity to the DCFS for adoptive planning and placement.

Mother and Father filed timely notice of appeal.

## ISSUES

Mother and Father claim that:

1. The juvenile court erroneously found that the beneficial relationship exception to termination of parental rights did not apply; and
2. The juvenile court committed reversible error by failing to comply with notice requirements of the Indian Child Welfare Act.

## DISCUSSION

1. *The Parents Did Not Establish the Beneficial Relationship Exception to Termination of Parental Rights in Section 366.26, Subdivision (c)(1)(B)(i)*

Both parents claim that the juvenile court erroneously found that the beneficial relationship exception to termination of parental rights did not apply. We find that substantial evidence supports the juvenile court's ruling.

### A. *Standard of Review*

Adoption is the permanent plan preferred by the Legislature. If the juvenile court finds that the child cannot be returned to her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under an exception in section 366.26, subdivision (c)(1)(B). (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

The burden then shifts to the parent to show that termination of parental rights would be detrimental to the child under an exception. Pursuant to section 366.26, subdivision (c)(1)(B)(i), the beneficial relationship exception to the adoption preference applies if the juvenile court finds a compelling reason for determining that termination of parental rights would be detrimental to the child because the “ ‘parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ” (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) The burden falls to the parent to show that exceptional circumstances militate against termination of the parent's rights to the child. (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

This court reviews a finding that the beneficial parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply according to the substantial evidence test. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 227-228.)

“The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re L. Y. L., supra*, 101 Cal.App.4th at p. 947.)

*B. The Parents Did Not Show Regular Visitation and Contact*

*i. Mother Did Not Show Regular Visitation and Contact With Trinity*

In the first six-month review period, Mother visited semi-regularly with Trinity, but allowed her personal difficulties with caregivers to prevent her from having regular visits. A March 3, 2010, visit was terminated when Mother arrived visibly intoxicated, smelling of alcohol, and under the influence. On July 9, 2010, Mother arrived “loaded” to her visit, and on September 3, 2010, Mother appeared for a visit overmedicated and “loopy,” causing both visits to be terminated. Mother was consistently 20 minutes late to scheduled visits and consistently missed visits due to sickness or conflicting appointments.

In the second six-month review period, Mother had visits twice a week, but was consistently 20 minutes late to scheduled visits and missed visits regularly due to sickness or conflicting appointments. Paternal Aunt Shelley continually had to remind Mother to visit with Trinity. Mother arrived two hours late for a visit on Christmas Eve, 2010, arrived one hour late for Trinity’s birthday party on December 28, 2010, arrived 50 minutes late for her visit on January 8, 2011, and missed her visit on January 22, 2011. The juvenile court made a finding that during this period the parents had not consistently and regularly visited Trinity.

In the final year of the dependency proceeding, Mother had no visits in the six weeks prior to April 22, 2011. Mother was invited to visit Trinity in the caregivers' home on Easter Sunday, April 24, 2011, but missed that visit. Mother had only two visits with Trinity in May, three visits in June, three two-hour visits in July, and one two-hour visit in August 2011. This was considerably less than the visitation the juvenile court had ordered: monitored visits a minimum of three times a week for three hours each.

Mother cancelled a visit on September 17, 2011. Mother arrived 30 minutes late to a visit on November 12, 2011. Mother missed five visits in November and December 2011 and January 2012.

Mother did not meet her burden of showing regular visitation and contact.

ii. *Father Did Not Show Regular Visitation and Contact With Trinity*

During the first six-month review period, Father missed two visits because he was in an inpatient detoxification program in July 2010. Father consistently was 20 minutes late to scheduled visits, and consistently missed visits due to sickness or conflicting appointments.

In the second six-month review period, as had occurred 2010, Father was consistently 20 minutes late to scheduled visits and missed visits regularly due to sickness or conflicting appointments. Father failed to arrive at a scheduled visit on January 8, 2011. Father arrived two hours late for a visit on Christmas Eve, 2010, and arrived one hour late for Trinity's birthday party on December 28, 2010. The juvenile court made a finding that during this period the parents had not consistently and regularly contacted and visited with Trinity.

In the final year of the dependency proceeding, Father missed a visit on January 25, 2011. By February 22, 2011, Father was again in rehab/detox and had not called or visited Trinity. Father's visits were inconsistent, as he often reported not feeling well. Father cancelled visits on February 13 and 15, 2011, did not visit Trinity on Valentine's Day, and as of March 24, 2011, had not visited or telephoned Trinity in more than two weeks. Father attended no scheduled visits during March 2011, and since April 2011 had attended visits only sporadically and often canceled because he felt ill or lacked transportation.

Father missed a visit on June 24, 2011. After leaving detox in mid-August 2011, Father had three visits in August and five visits in September, but cancelled four visits in September due to not feeling well. Father missed three visits in November 2011. Father missed three visits in December 2011, and left visits early four times in December 2011 and January 2012.

Father did not meet his burden of showing regular visitation and contact.

*C. The Parents Did Not Show That Trinity Would Be Greatly Harmed or Would Suffer Great Detriment By Termination of Parental Rights*

As to whether Trinity would benefit from continuing her relationship with the parents, the “benefit of relationship” test has several factors. “A beneficial relationship . . . ‘promotes 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.’ [Citation.] The existence of this relationship is determined by ‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs.’ [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.)

The parent-child interaction “will always confer some incidental benefit to the child. [Citation.] 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. . . . 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.)

“When determining whether the exception applies to bar termination of parental rights, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. However, if severing the existing parental relationship would deprive the child of ‘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.’ [Citation.] [But] if an adoptable child will not suffer *great detriment* by

terminating parental rights, the court must select adoption as the permanency plan.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229, italics added.)

i. *The Security and Sense of Belonging from Being in the Stable Family of Rowan Y. and David E. Outweigh the Strength and Quality of the Relationship Trinity Would Have in a Tenuous Placement With Mother and Father*

Trinity was eight years old at the January 24, 2012, hearing, but had not lived with Mother and Father for more than two years and four months since she was detained on September 6, 2009. Trinity had lived with David E. and Rowan Y. since at least October 6, 2010, or more than 15 months. Trinity’s needs were met and she was well cared for in their home, where she also she lived with an older, adult sibling. Trinity and David E. and Rowan Y. were observed to have a strongly bonded, nurturing, supporting, loving relationship. Although Trinity said she would feel sad if she were not allowed to visit Mother, she stated that of all the people in the world she had the best relationship with her aunt, her uncle, and her sister. She did not know if she had a special relationship with Father. She felt “kind of weird” about living with Mother. Trinity said she liked her home with her aunt, uncle, and sister, and wanted to stay there. She expressed a desire to be adopted by Rowan Y. and David E., who, she said, kept her safe.

The security and sense of belonging that being in the stable family of Rowan Y. and David E. would confer on Trinity outweigh the strength and quality of the relationship Trinity would have in a tenuous placement with Mother and Father.

ii. *Father Has Not Shown That Trinity Would Be Greatly Harmed or Would Suffer Great Detriment by Terminating Parental Rights*

Although Father played with Trinity and had fun with her, he took the role of a “fun dad” and relinquished responsibility for discipline to the caregivers during visits. Caregivers had to remind Father to discipline and feed Trinity, read to her, or get her bath ready. Father did not ask about Trinity’s schooling or her needs that he could help with. Paternal Aunt Shelley said Father had not considered the level of responsibility needed to care for Trinity on a daily basis. Trinity’s caretaker stated that Father did not help Trinity with her homework, and besides playing did no other activities with her. Trinity said she

only had fun with Father when he played videogames or watched cartoons with her. Trinity testified that Father had never helped her with her schoolwork or with an assignment or project, and had not helped her pick out clothing. Father did not talk with Trinity about school, but instead talked about fun things. Father had never attended an IEP meeting for Trinity and was not sure who Trinity's teacher was. Trinity's caretaker Rowan Y. testified that Trinity looked to her and David E. to parent her, for permission, and for everyday needs.

Father did not show that Trinity would be greatly harmed or would suffer great detriment by terminating parental rights.

iii. *Mother Has Not Shown That Trinity Would Be Greatly Harmed or Would Suffer Great Detriment by Terminating Parental Rights*

Before she was detained, Mother left Trinity to care for herself. Trinity had to prepare her own meals, consisting of peanut butter and Captain Crunch cereal, because Mother was usually asleep. Even at that time, Trinity stated that she wanted to be placed in the home of Rowan Y. and David E. During visits, Mother talked mainly about herself, causing Trinity to become bored with Mother and to try and find something else to do. Mother role-played a teacher-student situation, and only wanted to read to Trinity, talk to her like a teacher, and interrogate Trinity. Paternal Aunt Shelley stated that she had not observed a "true bond" or a strong attachment between Mother and Trinity, and there was a sense of disconnect in their interactions. In later visits, Mother tended to talk with the monitor and had to be reminded to visit with Trinity. Mother also tended to let Trinity have her way and if discipline were required, Mother leaned toward catering and giving in to Trinity. On another occasion, Mother tried to discipline Trinity when it was not necessary, treated her when she was eight years old as if she were still three years old, and did not allow her any independence. Mother failed to attend an IEP meeting for Trinity in May 2011, and after requesting another meeting the next month, failed to attend that meeting. In phone calls to Trinity, Mother resorted to "character voices" and baby talk, causing Trinity to become bored with the calls and to rush mother to end the call sooner.

Although Trinity said she liked visits with Mother and would feel sad if she were not allowed to visit Mother, she had the best relationship with David E., Rowan Y., and her adult sister, and liked their home and wanted to stay there.

Mother did not show that Trinity would be greatly harmed or would suffer great detriment by terminating parental rights.

## 2. *The Indian Child Welfare Act*

### A. *The Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)*

When a juvenile court has reason to know the proceeding involves an Indian child,<sup>2</sup> the children's social services agency must notify the Indian child's tribe, or, if the tribe's identity or location cannot be determined, the Bureau of Indian Affairs, of the pending proceedings and of the right to intervene. Notice must be sent to all tribes of which a child may be a member or eligible for membership. The notice must include the names of the child's ancestors and other identifying information, and be sent registered mail, return receipt requested. When proper notice is not given, the dependency court's order is voidable. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 383-384.)

"The Indian status of the child need not be certain. Notice is required whenever the court knows or has reason to believe the child is an Indian child." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1422; § 224.3, subd. (d).) Both the juvenile court and the county welfare agency have an affirmative duty to inquire whether a dependent child is or may be an Indian child. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.)

### B. *There Was No ICWA Violation as to Father*

#### i. *Information Concerning Father's Indian Ancestry*

On September 10, 2009, Father stated that he and Trinity were or might be members of the Blackfoot tribe. The juvenile court ordered the DCFS to investigate Father's claim of Indian ancestry.

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<sup>2</sup> " 'Indian child' means 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, subd. (4).)

The DCFS inquired of Father's sister, Shelley L. regarding possible Indian ancestry, and stated on October 6, 2010, that paternal family members were researching and gathering possible names and tribal membership.

On February 11, 2011, the DCFS received an ICWA questionnaire from paternal Aunt Rochelle L. (Shelley L.) stating that she had spoken with paternal relatives and there was no information about registered tribe members, names, or Indian ancestry, and she had no information regarding Indian ancestry for Trinity.

In the June 29, 2011, hearing, Father stated that stated that his sister had done research and talked to relatives in Oregon and found no information regarding Indian ancestry. The juvenile court again found no reason to believe Trinity fell within the ICWA.

ii. *Father's Information Was too Vague and Speculative to Require ICWA Notice*

Father claims that because one family member, Shelley L., could not identify Blackfoot tribal members in the family was not an excuse to fail to notify either the Blackfoot Tribe or the Bureau of Indian Affairs. Father refers to other family members—a sister living in Reseda, his brother David J., a younger brother who lives in Simi Valley, a mother who lived in a convalescent hospital, and a father who lived in the State of Washington.

“The circumstances that may provide reason to know the child is an Indian child include the following: [¶] (A) The child or a person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court [or to] the county welfare agency . . . ; [¶] (B) The residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community; or [¶] (C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government[.]” (Cal. Rules Ct., rule 5.481(a)(5).)

None of these circumstances applies in this appeal. No family member, or member of Trinity's extended family, informed or provided any information suggesting that Trinity was an Indian child. Although Father initially stated that Trinity was or might be a member of the Blackfoot tribe, by June 29, 2011, Father stated that his sister had done research and talked to relatives in Oregon and found no information regarding Indian ancestry. Thus the information Father provided was insufficient to give the juvenile court reason to believe that Trinity might be an Indian child. Even the earlier statement that Trinity was or might be a member of the Blackfoot tribe did not identify names of tribal members and was too vague and speculative to give the juvenile any reason to believe Trinity was an Indian child. (See *In re O.K.* (2003) 106 Cal.App.4th 152, 157.) Father's suggestion that there was a possibility that Trinity might be an Indian child, especially where he later retracted it by stating that his relatives could provide no information regarding Indian ancestry, was too vague and speculative to require ICWA notice. (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1516.)

We conclude that there was no violation of the ICWA as to Father.

*C. There Was No ICWA Violation as to Mother*

*i. Information Concerning Mother's Indian Ancestry*

On September 6, 2009, Mother stated that Trinity had no Indian heritage, and stated on a parental notification of Indian status form that she had no Indian ancestry. The juvenile court stated that the ICWA did not apply as to Mother.

On April 7, 2010, however, the juvenile court ordered the DCFS to investigate possible Indian ancestry for Mother, including whether the Carmel tribe was federally recognized. On August 5, 2010, Mother denied any Indian ancestry and was not familiar with a "Carmel" tribe."

On June 29, 2011, Mother's counsel stated that Mother had indicated that she had Cherokee background which had not been investigated.

ii. *Mother's Information Was too Vague and Speculative to Require ICWA Notice*

We have quoted the provisions of California Rules of court, rule 5.481(a)(5), *ante*. As was the case with Father, the information Mother's counsel provided was not sufficient to give the juvenile court reason to believe that Trinity might be an Indian child. Mother did not identify names of Cherokee tribal members and was too vague and speculative to give the juvenile court to give the juvenile court any reason to believe Trinity was an Indian child (see *In re O. K.*, *supra*, 106 Cal.App.4th at p. 157) or to require ICWA notice (*In re Jeremiah G.*, *supra*, 172 Cal.App.4th at p. 1516).

DISPOSITION

The order is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.