

Filed 2/9/16 In re V.N. CA2/5  
Opinion following rehearing

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.N. et al., Persons Coming Under the  
Juvenile Court Law.

B259606  
(Los Angeles County  
Super. Ct. No. DK05329)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Reversed with directions.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Mary Keenan for the Minor and Respondent.

A.N., the presumed father of the two children, V.N. and Danica N., appeals from a September 25, 2014 dispositional order in a dependency proceeding. The presumed father contends the dispositional order must be reversed because of noncompliance with the Indian Child Welfare Act and related California provisions. The parties have entered into a stipulation which we will discuss in greater detail shortly. We conclude the upshot of the stipulation is to permit a limited reversal of the dispositional order to allow compliance with the Indian Child Welfare Act and related California provisions. In addition, regardless of the parties' characterization the stipulation, they have stipulated to immediate remittitur issuance.

We initially filed an opinion and issued our remittitur on December 31, 2015. (*In re V.N.* (Dec. 31, 2015, B259606) [nonpub. opn.] ) However, our opinion misstated the order under review on several occasions. In addition, the disposition portion of the opinion incorrectly identified the order to be reversed. Pursuant to the request of the Department of Children and Family Services, we recalled the remittitur and granted rehearing. (*In re V.N.* (Jan. 22, 2016, B259606) [nonpub. order].) The stipulation is now before us once again.

Before discussing our reasons for accepting the stipulation, we wish to clarify our understanding of it. The stipulation is entitled in part, "joint application and stipulation for remand of action . . ." and immediate remittitur issuance. The stipulation itself refers on five occasions to a stipulation to remand. The stipulation is based in part upon the accompanying memorandum of points and authorities and an attached order. The memorandum of points and authorities on six occasions uses the terminology remand in some form. The proposed order uses the terminology remand on two occasions. The problem with the parties' terminology is Code of Civil Procedure section 906, which delineates the powers a reviewing court, does not refer to a remand disposition in this context. The same is true in terms of the language appearing in Code of Civil Procedure section 43. (Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2015) ¶ 11:48, p. 11-16.) And it bears emphasis that the error in this case involves a violation of federal law and ordinarily is reversible.

There is other language in the documents submitted by the parties which is solely consistent with a limited reversal of the judgment. For example, the parties' points and authorities cite to *Neary v. Regents of the University of California* (1992) 3 Cal.4th 273, 282. *Neary* is a case involving a stipulated reversal of a judgment. (See *People v. Barraza* (1994) 30 Cal.App.4th 114, 117; *Norman I. Krug Real Estates Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814, 1818-1819.) Additionally, the parties cite Code of Civil Procedure section 128, subdivision (a)(8) which only applies where an appellate court reverses or vacates a judgment based upon an agreement or stipulation. The parties' points and authorities also explain why there is no violation of Code of Civil Procedure section 128, subdivision (a)(8) because of this case's circumstances. In doing so, the parties rely upon our decision in the case of *In re Rashad H.* (2000) 78 Cal.App.4th 376, 379-382, an appeal resolved by a stipulated reversal. Finally, the stipulation, points and authorities, and proposed order all refer to the immediate remittitur issuance. Typically, the remittitur only issues after the filing of an opinion which affirms, reverses or modifies a judgment.

The parties' intentions are clear. They want to promptly have the Indian Child Welfare Act issue resolved. And their stipulation is "made and based on the reasons" in the points and authorities. As noted, the points and authorities contained a lengthy discussion concerning decisional authority and the like relating to stipulated reversals. And the central statutory focus of the points and authorities is language in Code of Civil Procedure section 128, subdivision (a)(8). Code of Civil Procedure section 128, subdivision (a)(8) only involves a judgment which is reversed or vacated pursuant to stipulation.

We again accept the parties' stipulation which we construe to amount to an agreement to a limited reversal. The parties agree in principle there was noncompliance with the Indian Child Welfare Act and related California provisions. We concur in their assessment in this regard. Any ambiguity in the stipulation about whether there was a violation of the Indian Child Welfare Act and related California provisions has no merit. There is no substantial evidence the notice requirements were obeyed. Further, the

parties agree the dispositional order must be reversed and remanded to permit proof of compliance with the Indian Child Welfare Act and related California provisions. Our ability to accept a stipulated reversal in the dependency context is discussed in the case of *In re Rashad H.*, *supra*, 78 Cal.App.4th at pages 379-382. The present case involves reversible error—the failure to present substantial evidence of compliance with the Indian Child Welfare Act and its related California provisions. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 736-740; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 471-472.) Under any circumstances, the dispositional order would be reversed. Thus, a stipulated reversal advances those interests identified in Code of Civil Procedure section 128, subdivision (a)(8). (*In re Rashad H.*, *supra*, 78 Cal.App.4th at pp. 379-382; see *Union Bank of California v. Braille Inst. of America, Inc.* (2001) 92 Cal.App.4th 1324, 1329-1330.) If proper notice and investigation is undertaken and no tribe asserts that any child is of Indian descent, the dispositional order is to be reinstated. If a tribe asserts that either or both of children are of Indian descent, the juvenile court must then comply with the Indian Child Welfare Act and related California provisions.

The dispositional order is reversed and the cause is remanded for compliance with the federal Indian Child Welfare Act requirements and related state provisions. The orders under review are affirmed in all other respects. The remittitur is to issue forthwith.

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.