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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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

SAN JOAQUIN COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

S.W. et al.,

Defendants and Appellants.

C068836

(Super. Ct. No.  
J05049)

S.W., mother, and T.S., father, appeal from orders of the juvenile court terminating their reunification services and placing the minors in long-term foster care. (Welf. & Inst. Code, §§ 366.21, 395; further undesignated statutory references are to the Welfare and Institutions Code.) Father argues the court erred in finding that there was evidence of a substantial risk of detriment in returning the minors to his custody and

that reasonable services were provided to him. Mother challenges the adequacy of the notice given pursuant to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and joins father's arguments. Except as to Mother's claim regarding the ICWA notice, we affirm the judgment.

### FACTS AND PROCEEDINGS

In December 2008, the San Joaquin County Human Services Agency (Agency) filed a petition to detain S.S., age 4 and N.S., age 3, due to mother's drug use and neglect of the minors' care. Father was in Arizona and unable to take the minors at that time. Father told the social worker he had Cherokee and Blackfoot Indian heritage through his parents, although they were not registered with any tribe. Mother indicated on her ICWA-020 form that the minors "may be" eligible for membership in a tribe but did not claim heritage in any particular tribe for herself or the minors, state the source of her belief that the minors may have Indian heritage or state that her claim stemmed from any of her ancestors. The court ordered the minors detained.

The Agency sent notice of the proceedings to the tribes in January 2009. The notice contained no information on the paternal grandparents or great-grandparents. None of the responses from the noticed tribes indicated the minors were eligible for membership.

In May 2009, the court sustained the petition and ordered mother to drug court. Father was present by telephone and submitted on the petition.

The disposition report stated the minors were placed together and had been in one home for the last six months. S.S. was having emotional difficulty after visits and was referred for an assessment for possible therapy. N.S. did not appear to need special services at that time. Father continued to reside in Arizona and wanted to be considered for placement only if mother did not reunify. The social worker made a referral for an interstate placement assessment. In June and July of 2009, the court adopted reunification plans tailored to meet the needs of each parent.

The review report filed in March 2010 stated the minors were moved to a new placement in December 2009, both were in therapy and, while the placement change was a setback for their behavioral issues, both were doing better and visits were going well. Father had moved to California and was looking for housing and work. Although he was referred to a parenting class, he had not begun work on his case plan, relying on mother to reunify. The social worker recommended that father's plan be modified to change the requirement for domestic violence counseling to individual counseling because there was no indication of domestic violence in his criminal history.

In March 2010, the court adopted the Agency's recommendation to continue services for father and amended his case plan by eliminating all counseling requirements. Father's

plan was limited to participating in a parenting class, obeying court orders and obtaining and maintaining a suitable residence. The court set a contested review hearing on termination of mother's services.

A supplemental report filed in May 2010 stated the minors were placed with a maternal aunt, had some adjustment problems and remained in therapy. The agency continued to recommend termination of mother's services.

The review report filed in June 2010 stated the minors remained in relative placement, were still having behavioral issues and needed a new therapist. Father's visits were going very well. Father had been unable to find suitable housing or permanent employment and the time limit for his services was up. The social worker believed that, with more time, he might succeed in completing his plan.

An extended contested hearing began in August 2010. Due to continuances and other factors, the hearing concluded with the court's ruling in June 2011. We note that such extended hearings do not serve the objective of prompt resolution of dependency cases in order to provide maximum stability for minors. Whenever possible, hearings should occur day to day until concluded with a minimum of continuances. (See *Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1243; see also *Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187.)

In any event, much of the testimony at the review hearing related to mother's mental status and progress in services.

In November 2010, the social worker testified that father's first visit with the minors was in January 2010. She stated he was currently living at the Stockton shelter but also lived with relatives. Father told her he planned to find suitable housing. The social worker said the shelter had a program for housing assistance and father had looked into it but she did not know if he had filled out the paperwork. The Agency was able to assist with housing by providing a deposit but the client had to have the ability to pay rent.

The social worker further testified about the parenting class requirement in father's plan. Father was first referred to parenting classes in February 2010 but he said he was focusing on finding work and could not go to classes. The father was not working at that time, but was volunteering almost full time. She testified father had done the intake for parenting but did not go to the class. The social worker stated that the parenting class was important and beneficial even though father was able to demonstrate he could parent both minors at visits. Father interacted appropriately with the minors at his weekly unsupervised visits and was good at redirecting them and instructing them on proper behavior. The social worker also discussed both minors' behavioral problems and observed that S.S., although active, was more manageable. The social worker acknowledged that it was possible for father to have the minors at the shelter. The social worker had reservations about placing S.S. at the shelter but believed that father could care for her; N.S. would be difficult to manage due

to the number of people there. Part of the social worker's concern was that shelter stays were limited to three months. Placement of the minors with father at the shelter would be possible if services continued, unless father was working. At the end of that hearing the court made it clear that father was to sign up for parenting class and gave the social worker discretion to place the minors with him.

In February 2011, the Agency reported that the minors were removed from the relative placement, had several placement changes and were now in separate placements. The changes resulted in renewed behavioral problems, however, the minors were beginning to stabilize with therapy and other intensive services. The report noted that father had not yet been able to find work or an appropriate residence. He was staying at the Stockton shelter from time to time and doing volunteer work there. The social worker believed placement of the minors with father at the shelter would not be beneficial to the minors due to the severity of their behavior problems and the need for structure and consistency in their lives to address them. The social worker also pointed to the minors' needs for security and stability after 26 months of services and recommended termination of reunification services.

In May 2011, N.S.'s foster mother testified about his out of control and difficult behaviors with which she had dealt since his placement in her home in November 2010. Various strategies to reassure him and set boundaries had resulted in some improvement over time. His behavior problems at school

included assaults on staff and led to weekly suspensions. The foster mother said it was necessary to watch everything N.S. did and that he required a lot of attention and guidance. The foster mother testified that, after medication was ordered for N.S., his behavior had improved both at home and at school.

The social worker again testified in May 2011, updating the court on the minors' current status and behavior issues. She further testified father was referred to parenting classes several times, and would contact the service provider but did not go to classes. She stated that sometimes father stayed at the shelter and sometimes he stayed with relatives, however, even if he were consistently at the shelter, she could not recommend placement of the minors there because of their behaviors and the intensive services they were getting. The social worker tried contacting father at the shelter but they did not know who he was and she was unable to reach him there. The social worker noted that if father did find work, he would not be able to provide the care the minors needed and she was uncertain the child care at the shelter could handle the minors' behavioral problems. The social worker was concerned that father still had not followed through to complete a parenting class. She did not think it was necessarily a good thing to give father a chance to parent now because changes had a negative effect on the minors' behaviors. She did not try to place the minors with him because she did not want to experiment with the minors' lives. Once again, the court encouraged father to go to parenting classes.

Father testified in June 2011. He acknowledged his plan included parenting classes and that he had not enrolled in a class. He did an orientation three or four months earlier but was late to the first class and was not allowed in. Father testified he was trying to get housing when there was an opening at the family shelter but he had not asked recently if one was, or would be, available. If there was room, he wanted to take custody of the minors immediately. Father testified he was currently living in a tent outside the shelter building and volunteered at the shelter during the day. Although he had heard that the minors had behavior problems, he had seen none during visits and characterized their behavior as sibling squabbles, reluctance or just being a child.

At the conclusion of the hearing, the court reviewed father's living situation, commenting it was not his fault he was unable to secure a stable home, but noted he had not been able to complete a parenting class. The court concluded more time would not help either parent reunify. Finding clear and convincing evidence that returning the minors would create a substantial risk of detriment, that there had been insufficient compliance with the case plan, and that reasonable services were offered, the court terminated services for both parents and set a selection and implementation hearing. The order was later modified to an order for long-term foster care.

## DISCUSSION

### I

#### *Returning the Minors to Father's Custody*

Father argues the court erred in finding clear and convincing evidence of a substantial risk of detriment in returning the minors to his custody, asserting that his poverty and lack of housing were inadequate reasons to deny return.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*Jason L.*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

At the review hearing held 18 months after the date the minors were originally removed from the mother's physical custody, the "court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of

the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and . . . the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided . . . ." (§ 366.22, subd. (a).)

Father's court-ordered case plan included two major elements: participation in a parenting class and securing stable housing. The evidence before the court established father had accomplished neither. In his opening brief, father focuses on his inability to achieve stable housing and argues that his poverty and homelessness cannot support a finding of detriment. The factual underpinning of the actual ruling is not so simple.

The court recognized that father's failure to achieve stable housing was not entirely his fault. However, father also did not complete a parenting class, despite multiple referrals and continued direction from the court that he do so. Father did not attempt to complete his service plan while he lived in Arizona, instead relying on mother to reunify with the minors. Once father moved to California in late 2009 or early in 2010,

the social worker referred him to a parenting class but he continued to rely on the mother to reunify.

Father did demonstrate parenting ability in visits but never attempted to have the parenting class requirement removed from his plan as the counseling requirement had been. Rather than attending the parenting classes, father tried to excuse his lack of compliance by blaming his efforts to find work and late arrival at one class for his inability to attend during the 18 months services were offered to him. Father's minimal efforts to complete a parenting class show a lack of commitment to the minors. Indeed, he showed more commitment to the shelter by his dedicated volunteerism than he did to the minors.

However, as the social worker's and foster mother's testimony amply demonstrated, these minors require full-time commitment and dedication to providing a stable home and managing their challenging behaviors. Father minimized or discounted reports of the minors' behavior problems, raising serious questions about his ability to parent them full time, questions which a parenting class might have answered. Neither the social worker nor the court was required to experiment with the minors' well-being by placing them with a parent whose commitment and abilities were questionable. Ample evidence supported the court's finding that return would create a substantial risk of detriment to the safety, protection, physical and emotional well-being of the minors.

## II

### *Reasonable Services for Father*

Father contends that substantial evidence did not support the court's finding that reasonable services were offered because the services were not tailored to his needs and he was given no help in finding housing.

If a child is not returned to parental custody at the 18-month review hearing, the "court shall determine whether reasonable services that were designed to aid the parent . . . in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent . . . ." (§ 366.21, subd. (e).) The purpose of reunification services is to ameliorate the conditions which led to removal so that the child may be returned home. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) The social worker must make "a good faith effort" to provide reasonable services responding to the unique needs of each family. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254; see also *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) The question is not whether more or better services could have been provided, but "whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The original case plan included attending parenting classes and domestic violence counseling and securing stable housing. When the Agency became aware that domestic violence counseling was unnecessary, it recommended deleting that provision and the

court further modified the plan to remove all counseling requirements. The social worker testified parenting classes would be beneficial and that father was referred several times. Father did not attempt to modify the plan to delete the parenting class requirement as unnecessary. There apparently was a period of time when one class to which he was referred was unavailable, but, when a class was available, father either made no effort or minimal effort to attend it.

The social worker testified that housing assistance was available at the shelter where father volunteered and he had looked into it but that she did not know whether he completed the paperwork. The only assistance available from the Agency was payment of a rental deposit, but father did not qualify for that assistance because he did not have the ability to pay rent. Father was aware of accommodations at the shelter suitable for a family but did not make an ongoing effort to determine if any were available so that the minors could be placed with him. The social worker tried to contact him at the shelter but was never able to find him there, in part, because he was not actually living in the shelter, but in a tent he pitched in the evening and packed up in the morning.

Father was referred to services and had assistance available to him. He simply did not make use of the services. "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) The evidence supports the court's finding that reasonable services were offered to father. (*In re*

*Angelia P., supra*, 28 Cal.3d at p. 924; *In re Jason L., supra*, 222 Cal.App.3d at p. 1214.)

### III

#### *ICWA Notice*

Mother asserts that ICWA notice was incomplete in that it lacked information on relatives, there was no inquiry of known relatives, known relatives were excluded from the notices and no paternal relatives were included.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and the Agency have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, an Indian child. (Cal. Rules of Court, rule 5.481(a).) If, after the petition is filed, the court "knows or has reason to know that an Indian child is involved," notice of the pending proceeding and the right to intervene must be sent to the tribe or the Bureau of Indian Affairs if the tribal affiliation is not known. (25 U.S.C. § 1912; see § 224.2; Cal. Rules of Court, rule 5.481(b).)

State statutes, federal Regulations and the federal guidelines on Indian child custody proceedings all specify the contents of the notice to be sent to the tribe in order to inform the tribe of the proceedings and assist the tribe in

determining if the child is a member or eligible for membership. (§ 224.2; 25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979) B.5.) If known, the agency should provide name and date of birth of the child; the tribe in which membership is claimed; the names, birthdates, and places of birth and death, current addresses and tribal enrollment numbers of the parents, grandparents and great-grandparents as this information will assist the tribe in making its determination of whether the child is eligible for membership and whether to intervene. (§ 224.2; 25 C.F.R. § 23.11(a), (d), (e); 44 Fed.Reg. 67588 (Nov. 26, 1979) B.5; *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1455.)

The Indian status of a child need not be certain to trigger ICWA's notice requirements. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.) However, not every allegation of Indian heritage requires ICWA notice. Allegations can be "too vague and speculative to give the juvenile court any reason to believe the minors might be Indian children." (*In re O.K.* (2003) 106 Cal.App.4th 152, 157.) A juvenile court has "no obligation to make a further or additional inquiry in the absence of any evidence supporting a reasonable inference that the child might have Indian heritage. [Citation.]" (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 708.)

In this case, father's claim of Cherokee and Blackfoot Indian heritage through his parents was sufficiently specific to trigger notice and inquiry. The Agency recognizes that, as to father, the notices sent to the tribes did not contain

information on the minors' paternal ancestors. While it is true that the parent has some responsibility to provide that information, it is also true that when there is ancestry information known to the Agency, it must be included in the notice. Further, the Agency has a duty to inquire of the parent and relatives who were in contact with the Agency to secure additional information.

Mother's claim that the minors may have Indian heritage was too vague to trigger any inquiry as to her genealogical information. Indeed, her claim can be seen as little more than a belief that the minors may have Indian heritage because father claimed it. No further requirement of notice or inquiry as to mother is occasioned by such a tenuous claim.

Reversal is required to permit proper notice with all available information so that the tribes can make an informed decision on whether the minors are, or are eligible to be, Indian children.

#### DISPOSITION

The orders terminating services and placing the minors in long-term foster care are reversed and the matter is remanded for the limited purpose of permitting the Agency to comply with the notice and inquiry provisions of the ICWA and for the court to determine whether ICWA applies in this case. The juvenile court shall order the Agency to comply promptly with the inquiry and notice provisions of the ICWA. Thereafter, if there is no response or if the tribes determine the minors are not Indian

children, the orders shall be reinstated. However, if a tribe determines the minors are Indian children or if information is presented to the juvenile court that affirmatively indicates the minors are Indian children as defined by the ICWA and the court determines the ICWA applies to this case, the juvenile court is ordered to conduct a new review hearing in conformance with all provisions of the ICWA.

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.