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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re ANGEL R., a Person Coming
Under the Juvenile Court Law.

C070071

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

(Super. Ct. No. J05349)

Plaintiff and Respondent,

v.

K.J.,

Defendant and Appellant.

K.J. (mother) appeals from the juvenile court's orders terminating her parental rights and ordering a permanent plan of adoption as to the minor Angel R. (Welf. & Inst. Code, § 366.26.)¹ Mother contends that proper notice under the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) was not given. Respondent San Joaquin County Human Services Agency

¹ Undesignated statutory references are to the Welfare and Institutions Code.

(the Agency) correctly concedes the issue. We shall remand for further proceedings under the ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

In light of the sole contention on appeal, we give the underlying facts briefly.

The Agency filed a section 300 petition as to the infant minor in January 2010, alleging the minor (who had four half siblings already under the juvenile court's jurisdiction) was at risk due to mother's history of substance abuse and domestic violence and to the filthy state of the parental home.

In December 2009, the social worker completed an ICWA form which stated that the minor's maternal great-grandmother, N.C., was Cherokee, and the minor's unnamed paternal great-grandmother was Blackfeet. However, the subsequent jurisdiction report indicated that the ICWA did not apply because mother had denied Indian heritage at the detention hearing.²

The juvenile court took jurisdiction over the minor in April 2010. In October 2010, at the dispositional hearing, the juvenile court placed the minor in foster care and granted reunification services to the parents.

After learning that mother had claimed Indian heritage in the half siblings' case, the Agency gave the ICWA notice to the three federally recognized Cherokee tribes in March 2011; the

² The minor's father repeatedly denied Indian heritage.

Blackfeet tribe did not receive notice. The notice gave no information about the minor's paternal ancestry aside from the father. As to the minor's maternal ancestry, it gave no information other than the names and current addresses of two persons, both said to be the maternal great-grandmother, and neither of whom had the same name as the person so identified in the December 2009 form. (One had the same first name, but a different last name.) The address of one of those persons was given only as "Luisiana" (*sic*).

In June 2011, the juvenile court terminated the parents' reunification services and found, based on the lack of responses from the Cherokee tribes to date, that the ICWA did not apply.

In August 2011, the Agency filed a declaration stating that it had received negative responses from all of the Cherokee tribes.³

In November 2011, the juvenile court terminated parental rights and ordered a permanent plan of adoption for the minor.

DISCUSSION

Mother contends the Agency failed to comply with the ICWA because it did not give notice to the Blackfeet tribe and did not properly perform its duty of inquiry, and the juvenile court's orders terminating parental rights and ordering a permanent plan of adoption must therefore be vacated. The

³ Two of the responses were received before June 2011, but the third was received in August 2011.

Agency concedes both points. We shall remand for further proceedings under the ICWA.

When the juvenile court knows or has reason to know that a child involved in a dependency proceeding is an Indian child, the ICWA requires that notice of the proceedings be given to any federally recognized Indian tribe of which the child might be a member or eligible for membership. (25 U.S.C. §§ 1903(8), 1912(a); *In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) Notice requirements are construed strictly. (*In re Robert A.*, at p. 989.)

Section 224.3, subdivision (a) imposes "an affirmative and continuing duty to inquire" whether a child is or may be an Indian child.

Notice must include all of the following information, if known: the child's name, birthplace, and birthdate; the name of the tribe in which the child is enrolled or may be eligible for enrollment; names and addresses (including former addresses) of the child's parents, grandparents, great-grandparents, and other identifying information; and a copy of the dependency petition. (25 C.F.R. § 23.11(d)(1)-(4); § 224.2, subd. (a)(5)(A)-(D); *In re D.W.* (2011) 193 Cal.App.4th 413, 417; *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.)

Although the ICWA notice errors are subject to harmless error review (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784), failure to give notice to a federally recognized tribe that has been identified as a possible source of Indian

ancestry for the minor cannot be harmless (see *In re Desiree F.* (2000) 83 Cal.App.4th 460, 472). Here, the Blackfeet tribe was so identified, yet never received notice. This failing in itself requires remand.

In addition, as the Agency concedes, the information provided to the Cherokee tribes was minimal, internally conflicting, and inconsistent with what had been provided to the Agency at the outset of the case. On this record, it does not appear that the Agency performed its duty of continuing inquiry (§ 224.3, subd. (a)) or that the tribes had sufficient reliable information to investigate the matter properly. For this reason as well, we must remand the matter to the juvenile court for further proceedings under the ICWA.

DISPOSITION

The matter is remanded to the juvenile court with directions to vacate its orders terminating parental rights and ordering a permanent plan of adoption, and to give new ICWA notice to the Blackfeet and Cherokee tribes, which shall include any further information the Agency may obtain through a properly diligent inquiry. If the court finds, after the new notice has been given, that the ICWA has been complied with and does not apply, the court shall reinstate its orders terminating parental rights and ordering a permanent plan of adoption. If the court

finds that the ICWA applies, it shall proceed in accordance with the ICWA.

BUTZ, J.

We concur:

NICHOLSON, Acting P. J.

MAURO, J.