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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re T. D., a Person Coming Under the
Juvenile Court Law.

C070499

SHASTA COUNTY HEALTH AND HUMAN SERVICES
AGENCY,

(Super. Ct. No.
10JVSQ2856501)

Plaintiff and Respondent,

v.

THOMAS D. III,

Defendant and Appellant.

Presumed father Thomas D. III appeals the juvenile court's order terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)¹ He contends the order must be reversed because of noncompliance with the Indian Child Welfare Act. (ICWA; 25 U.S.C. § 1901 et seq.) We find any error harmless and affirm.

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

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In August 2010 the Shasta County Health and Human Services Agency (Agency) detained the then eight-year-old minor, who had been living with his paternal grandmother in a trailer filled with drugs and drug users. The Agency filed a petition alleging the minor was at substantial risk of physical harm because of his parents' history of domestic violence and substance abuse. In addition, mother had not maintained contact with the minor since he was two years old and father had been incarcerated for most of the minor's life. (§ 300, subd. (b).)

Father responded to the "Parental Notification of Indian Status," stating he was unaware of having any Indian ancestry. The paternal uncle, father's full sibling, indicated he had Cherokee Indian ancestry. The CLETS/NCIC report lists four aliases for father: Thomas D., Thomas Edgar D. III, Thomas Edgar D., and Thomas Edgar D., Sr. The declaration of paternity lists father's name as Thomas Edgar D. III, and this is the name father used to sign documents.

After the initial detention, mother was located in San Diego County. She reported she had not seen the minor since he was two years old. She responded to the Parental Notification of Indian Status, stating she was unaware of having any Indian ancestry. After returning this form, mother had no further contact with social workers and could not be located, despite the social workers' repeated efforts.

At the disposition hearing, the juvenile court found the minor a dependent of the court and that he would be at

substantial risk of danger if returned to his parents' custody. Reunification services were bypassed as to both parents, and neither was given visitation. Father remained in custody, with an expected release date of 2014. The minor was doing well in his foster home, where he had been living since being placed in custody, and the foster parents wanted to adopt him.

ICWA notices were sent to the Cherokee tribes and the Bureau of Indian Affairs (BIA). The notices listed mother's name, address, and date and place of birth. They did not list any of mother's biological relative information, and she claimed no tribal affiliation. The notices listed father's name as Thomas Edgar D. III and Thomas D. Sr., his address, his date and place of birth, his claimed tribal affiliation, and the known information of his parents and grandparents. There is no response in the record from the BIA, although an addendum report filed January 10, 2012, claims the Agency did receive a response. Each of the Cherokee tribes indicated there was no evidence of tribal membership and declined to intervene.

At the permanency planning hearing, the court found ICWA did not apply. The court also found the minor was adoptable, selected adoption as the permanent plan, and terminated parental rights.

DISCUSSION¶

Father contends the juvenile court erred by failing to ensure proper notice was given to the Indian tribes under ICWA. Specifically, he argues the notices were deficient because they failed to contain all known information about names that father

used or was known by and did not contain information about mother's ancestry. He contends these omissions were prejudicial because if the minor "is an Indian Child, the outcome of this case would have been significantly different, to the benefit of both [the minor] and Father." We are not persuaded there was prejudicial error.

When the juvenile court knows or has reason to know that a child involved in a dependency proceeding may be an Indian child, 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.) The ICWA notice must include, among other things, the following information, if it is known: the name, birth date, and birthplace of the Indian child; the name of the Indian tribe in which the child is a member or may be eligible for membership; and all names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married, and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment numbers, and any other identifying information. (§ 224.2, subd. (a)(5).) It is the social worker's "duty to inquire about and obtain, if possible, all of the information about a child's family history" necessary for the ICWA notice. (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116.) Because the "purpose of the ICWA notice provisions is to enable the tribe or the BIA to

investigate and determine whether the child is in fact an Indian child," the notice must contain sufficient "information to permit the tribe to conduct a meaningful review of its records to determine" tribal membership. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) "[E]rrors in an ICWA notice are subject to review under a harmless error analysis." (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1414 (*Brandon T.*)). We do not presume error. Rather, it is father's obligation, as the appellant, to present a record that affirmatively demonstrates error. (*In re D.W.* (2011) 193 Cal.App.4th 413, 417-418 (*D.W.*)). He has not met this burden.

As to the claims of omitted information on mother's ancestry, the ICWA notice requirements are that the agency must provide the relevant information *if known*. Here, the only information mother provided relevant to ICWA was that she had no known Indian ancestry. After providing that information, mother could not be located. The Agency had no information suggesting there might be tribal membership through mother and no information about her relatives. The notice provided all the information known about mother. That was all that was required. Moreover, even if the omission could somehow be viewed as an error, it was harmless. As indicated, there was no evidence of Indian ancestry through mother. Accordingly, including information about non-Indian ancestors of mother could not have produced a different result. (*Brandon T., supra*, 164 Cal.App.4th at pp. 1414-1415.)

Nor do we find the omission of two of father's aliases prejudicial. The Agency was aware father had four aliases: Thomas D., Thomas Edgar D. III, Thomas Edgar D., and Thomas Edgar D., Sr. The ICWA notice listed two of the aliases: "Thomas Edgar D. III" and "Thomas D. Sr." In essence, father's argument is that leaving off the aliases Thomas D. and Thomas Edgar D. precluded the tribes from conducting a meaningful review of their records. We do not believe the omission of two aliases that are so close to the names included in the notice would preclude meaningful review by the tribes. "Had a tribe determined that a person who matched all of those criteria, but who had a slightly different . . . name, been a member of the tribe or eligible for membership, surely the tribe would have said so." (*D.W., supra*, 193 Cal.App.4th at p. 418.) Furthermore, the ICWA notice included information regarding father's parents, and maternal and paternal grandparents. Father makes no complaint about the adequacy or accuracy of the information provided as to his ancestry. Father does not contend that this information was insufficient to enable the tribes to determine tribal membership with respect to those ancestors. Because no tribe suggested any of father's parents or grandparents were tribal members or eligible for membership, "it follows that the [father] was not eligible regardless" of which of his aliases was used on the ICWA notice. (*Ibid.*)

DISPOSITION

The juvenile court order is affirmed.

RAYE, P. J.

We concur:

ROBIE, J.

MURRAY, J.