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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

In re A.P., a Person Coming Under the  
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

C070754

(Super. Ct. No.  
JD229268)

A.P., the father of three-year-old minor A.P., appeals from an order of the Sacramento County Juvenile Court terminating his parental rights.

On appeal, father contends the order must be reversed due to the juvenile court's failure to comply with the notice provisions of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) We shall affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

Because father's contentions relate exclusively to the issue of ICWA compliance, our statement of facts is limited to that issue.

### *Prior Dependency Proceeding*

The minor was the subject of a prior juvenile dependency case, initiated by a February 2009 Welfare and Institutions Code<sup>1</sup> section 300 petition filed by the Sacramento County Department of Health and Human Services (Department). In February 2009, father told the social worker that both his parents have Cherokee heritage. At the initial hearing, the juvenile court ordered father to "complete and return the Indian Ancestry Questionnaire to the Department with[in] two days."

By March 2009, the Department had not received father's questionnaire. On March 6, 2009, the Department sent notice to the three federally recognized Cherokee tribes containing the minimal information the Department had.

Thereafter, the Department received an Indian Ancestry Questionnaire and a "family tree" completed by the paternal grandmother, Jackie P. On the tree, Jackie P. identified the "Paternal Grandfather" as "Robert E[.]C[.] [sic]," and identified the "Paternal Grandmother" as "Sylvia A[.]C[.] [sic]." Jackie P. identified the "Paternal Gt. Grandfather" as

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

"unknown J[.]" and identified the "Paternal Gt. Grandfather" as "C[.]"

After receiving the documents from Jackie P., the Department's ICWA paralegal telephoned father. Father "review[ed] and clarif[ied] information in the Indian Ancestry Questionnaire." Based on the corrections provided by father, the paralegal prepared an amended notice (form ICWA-030) and sent a second round of notices to the tribes. The amended notice included "information of new/additional ICWA-Family Heritage/Ancestry [that had been] provided to" the Department.

On the amended notice, the "Father's Biological Mother (Child's Paternal Grandmother)" is listed as "Jacquelyn (Jackie) Terese P[.] (Maiden: C[.])." The "Father's Biological Father (Child's Paternal Grandfather)" is listed as "No information."

On the amended notice, "Silvia C[.]" and Robert E[.]C[.]" are listed as "Father's Biological Grandmother (Child's Paternal Great-grandmother)" and "Father's Biological Grandfather (Child's Paternal Great-grandfather)," respectively. This differs from the family tree, on which they were listed as paternal grandparents.

In June 2009, at the jurisdiction and disposition hearing in the previous dependency case, the juvenile court found that "the child is not eligible for tribal membership and is not an Indian child for purposes of [ICWA]."

In December 2009, the juvenile court terminated the minor's dependency status.

### *Petition*

In January 2011, the Department filed a petition alleging the minor came within the provisions of section 300, subdivision (b), failure to protect. Mother completed form ICWA-020, Parental Notification of Indian Status, stating she had no known Indian ancestry.

At the initial hearing in January 2011, the juvenile court ordered father to "complete and return the Indian Ancestry Questionnaire to the Department within two days."

Father did not return the questionnaire. Thus, when the ICWA paralegal prepared ICWA notice to the tribes, he had to rely on information from the notices sent to the tribes for the prior dependency case.

The Department received responses from the three Cherokee tribes. Each tribe indicated that the minor is not an Indian child.

### *Jurisdiction and Disposition*

At the jurisdiction and disposition hearing in April 2011, the juvenile court found that ICWA was not applicable.

### DISCUSSION

Father contends the juvenile court erred by failing to ensure that proper notice of the pending proceeding was given to the tribes as required by ICWA. Specifically, father claims (1) "the information on the notices did not match what was written on the family tree questionnaire completed by the paternal grandmother," (2) "the notices failed to contain information about [the minor's] maternal ancestors as is required by federal

regulation," and (3) "information about the paternal grandfather should have been listed on the notices that were sent to the Indian tribes." Father claims these errors were prejudicial and require reversal of the order terminating parental rights because "the tribes would have been unable to make a correct decision regarding" the minor's eligibility since "their decision would have been based on incorrect information." We are not persuaded.

"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. [Citation.] To facilitate participation, notice of the pending proceeding and the right to intervene must be sent to the tribe or to the bureau if the tribal affiliation is not known. [Citations.] Once notice is provided, it must be sent for each subsequent hearing until it is determined that ICWA does not apply. [Citations.]

"Because the principal purpose of ICWA is to protect and preserve Indian tribes, a parent's failure to raise an ICWA notice issue in the juvenile court does not bar consideration of the issue on appeal. [Citations.]

"Section 224.2, subdivision (a)(5) requires an ICWA notice to include, among other things, the name, birth date, and birthplace of the Indian child, if known; the name of the Indian tribe in which the child is a member or may be eligible for membership, if known; 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, if known." (*In re D.W.* (2011) 193 Cal.App.4th 413, 417.)

*Family Tree Questionnaire and Amended Notice*

We first consider father's contention that "the information on the [amended ICWA] notices did not match what was written on the family tree questionnaire completed by the paternal grandmother." Specifically, "the paternal great-grandparents are listed as grandparents on the forms completed by the grandmother, but on the [amended ICWA] notices [they] are listed as great-grandparents." As restated by the Department, father's argument is that "Robert C. and Sylvia C. should have been listed on the ICWA notice as the paternal grandfather and grandmother, respectively, instead of as the paternal great-grandparents." The point has no merit.

Father's argument overlooks his March 11, 2009, telephone conversation with the ICWA paralegal in which father "review[ed] and clarif[ied] information in the Indian Ancestry Questionnaire" provided by Jackie P. (*In re S.C.* (2006) 138 Cal.App.4th 396, 402 [appellant must fairly set forth all significant facts, not just those beneficial to him].) The obvious inference is that, during this review and clarification, father and the paralegal determined that Jackie P. had omitted from the family tree one generation of paternal relatives--

curiously, herself and the paternal grandfather. (*Id.* at p. 415 [appellate court accepts every reasonable inference that the juvenile court could have drawn from the evidence].)

At the jurisdiction hearing two years later, father reviewed the amended notice with his counsel. This exchange ensued:

"[FATHER'S COUNSEL]: Your Honor, I have gone over the ICWA 030 with my client. It is the information that -- the information is as correct as he is under the -- it --

"THE COURT: It's the best information he's got?"

"[FATHER'S COUNSEL]: Best information he has. Thank you."

We thus deduce that, as of the present jurisdiction hearing, father believed the information he had discussed with the paralegal two years previously was correct.<sup>2</sup>

On appeal, father disregards this history and argues the paralegal's correction of Jackie P.'s family tree was a "mistake." But father fails to explain or provide any credible support for his argument that Jackie P.'s family tree is more accurate than the information father and the paralegal included in the amended notices. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408 [to demonstrate error, appellant must present meaningful

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<sup>2</sup> The Department claims father's "assertion [in the juvenile court] that the ICWA notice was correct is tantamount to a deliberate attempt to invite error." We disagree.

Nothing in the record suggests the amended notice was incorrect or that its use by the court would be error; thus, the record does not suggest father deliberately invited the court to err.

legal analysis supported by citations to authority and citations to facts in the record that support the claim of error].)

Indeed, defendant's opening brief does not even identify the paternal grandmother by name.

"As the appellant, father has the duty to present error affirmatively by an adequate record; error is never presumed. [Citation.]" (*In re D.W.*, *supra*, 193 Cal.App.4th at pp. 417-418.) Father has not identified any evidence in the record suggesting that Jackie P.'s family tree was correct as originally written or that the tree's effective revision by father and the ICWA paralegal was incorrect. Thus, father has failed to affirmatively demonstrate error on appeal. (*Ibid.*)

#### *Information on Maternal Relatives*

Although he acknowledges that mother "indicated she did not have Indian Ancestry," father nevertheless contends the ICWA notice was insufficient because the notice forms omitted information regarding mother's ancestors. We find no prejudicial error.

"It is true that an ICWA notice must contain information about the Indian child's biological relatives, including grandparents and great-grandparents. [Citations.] However, errors in an ICWA notice are subject to review under a harmless error analysis. [Citation.] [¶] . . . Although it was error to omit information about the [maternal relatives], there was no claim that [they] had Indian heritage; thus, no prejudice could have occasioned the omission." (*In re Brandon T.* (2008) 164

Cal.App.4th 1400, 1415; accord, *In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 574-577.)

*Information Regarding the Paternal Grandfather*

We lastly consider father's contention the amended ICWA notices were deficient because "information about the paternal grandfather should have been listed on the notices . . . ." The point has no merit.<sup>3</sup>

As noted, the paternal grandfather's information must be included in the ICWA notices to the tribes "if known." (*In re D.W.*, *supra*, 193 Cal.App.4th at p. 417.) As with the foregoing claims, "father has the duty to present error affirmatively by an adequate record; error is never presumed. [Citation.]" (*Id.* at pp. 417-418.) Thus, it is father's duty to show by an adequate record that the paternal grandfather's information was known to the Department or the juvenile court. (*Ibid.*) Father has not satisfied this duty.<sup>4</sup> His claim the paternal grandfather's information was erroneously omitted has no merit.

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<sup>3</sup> Father's opening brief does not contend the Department or the juvenile court erred by failing to inquire of other paternal relatives regarding identifying information for the paternal grandfather. Any such contention is forfeited. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840.)

<sup>4</sup> The Department claims any error was harmless because "[t]he ICWA notice included information regarding the paternal great grandparents." However, the notice included information on only one of the two sets of paternal great-grandparents, i.e., one set of father's grandparents. The notice did not name father's other set of grandparents, and the tribes had no evident way to determine whether the minor was eligible for membership through

DISPOSITION

The order is affirmed.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

DUARTE, J.

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the omitted set. Thus, omission of information on the paternal grandfather (father's father) cannot be deemed harmless.