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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 E. B., a Person Coming Under the Juvenile Court Law.

SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ROSE B.,

Defendant and Appellant.

C070849

(Super. Ct. No. J05308)

Rose B., mother of the minor, appeals from orders terminating her parental rights. (Welf & Inst. Code, §§ 366.26, 395.) Appellant raises no challenges to the termination orders, arguing only that a new notice under the Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.) is required. Respondent concedes new notice is necessary for one, but not all, of the relevant tribes.

We conclude that new notice to all relevant tribes is required. We reverse and remand for the limited purpose of full compliance with the ICWA.

## FACTUAL AND PROCEDURAL BACKGROUND

Because the sole issue is compliance with the ICWA, the following facts are limited to that issue and the procedural posture of the case.

The infant minor and his siblings were removed from parental custody based on a petition filed in Contra Costa County in October 2008 by Contra Costa County Children and Family Services Bureau. In February 2009, the court ordered reunification services for appellant.

Appellant had claimed heritage in the Cherokee and “Black Foot” (*sic*) tribes.<sup>1</sup> The August 2009 Family Services Bureau report for the six-month review hearing said that responses were received from the Cherokee Nation, the Eastern Band of Cherokee Indians and the Blackfeet Tribe, all stating the minor was not considered an Indian child. The report did not state notice was mailed to all tribes, and there was no mention of any response from the United Keetoowah Band of Cherokee Indians. The record does not contain copies of the notices sent to the tribes, proofs of service, or return receipts.

In November 2009, the court in Contra Costa County ordered additional services, found the ICWA did not apply and transferred the case to San Joaquin County. The San Joaquin County juvenile court accepted the transfer and eventually terminated services for appellant in March 2010.

A report by the San Joaquin County Human Services Agency (HSA) in August 2010 recommended a permanent plan of long-term foster care for the minor. A second report noted that the Contra Costa County juvenile court had previously found the ICWA did not apply.

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<sup>1</sup> The three Cherokee tribes are the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians. (76 Fed.Reg. 30461 (May 25, 2011).) The sole Blackfeet tribe is the Blackfeet Tribe of Montana. (76 Fed.Reg. 30460 (May 25, 2011).)

By February 2011, HSA reported the minor, while diagnosed with cerebral palsy, was specifically adoptable by his current caretaker and the court set a hearing pursuant to Welfare and Institutions Code section 366.26. At the contested section 366.26 hearing in February 2012, the court terminated parental rights.

### **DISCUSSION**

Appellant contends the Contra Costa County juvenile court failed to comply with the ICWA and California law by failing to file copies of the notices, proofs of services and return receipts. Further, appellant argues that, because there was no response from the United Keetoowah Band of Cherokee Indians, it is not possible to discern from the record whether notice was sent to that tribe. Respondent concedes that the record does not reflect whether notice was sent to the United Keetoowah Band of Cherokee Indians and that reversal to provide notice to that tribe is appropriate. The question remains whether, given the state of the record, new notice should be sent to all the tribes. We conclude that new notice to all tribes is required.

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.) To facilitate determination of whether the minor is an Indian child and to permit participation in the dependency case, notice of the proceedings must be sent to the relevant tribe or tribes when the court “knows or has reason to know that an Indian child is involved.” (Welf. & Inst. Code, § 224.2; Cal. Rules of Court, rule 5.481(b); *In re Jeffrey A.* (2002) 103 Cal.App.4th 1103, 1106-1107.) “Proof of the notice, including copies of notices sent and all return receipts and responses received, shall be filed with the court . . . .” (Welf. & Inst. Code, § 224.2, subd. (c); Cal. Rules of Court, rule 5.482(b).)

The record contains none of these documents, only a statement that responses were received from three of the four tribes. Had the Contra Costa County social worker

certified that notice was sent to each of the tribes, we might infer that notice was sent to all. (*In re S.B.* (2009) 174 Cal.App.4th 808, 812-813.) Because no such information appears in the record, the inference cannot be made. Accordingly, we accept respondent's concession that notice must be sent to the United Keetoowah Band of Cherokee Indians.

Appellant argues that the failure to include the notices means that they cannot be reviewed for completeness and accuracy. We agree.

If known, the agency should provide the name, the date of birth and place of birth of the child; the tribe in which membership is claimed; the names, birth dates, 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. (Welf. & Inst. Code, § 224.2; 25 C.F.R. § 23.11(a), (d), (e) (2012); 44 Fed.Reg. 67588 (Nov. 26, 1979); *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1455.) Further, the notice should contain, inter alia, a statement of the right to intervene, the right to counsel, the right to a continuance and the addresses of the court and the parties and should have a copy of the petition attached to inform the tribe of the nature of the pending proceedings. (Welf. & Inst. Code, § 224.2; 25 C.F.R. § 23.11(a), (d), (e) (2012); 44 Fed.Reg. 67588, *supra.*)

Failure to provide all known information can result in an incorrect determination that the ICWA does not apply. Without access to the notices, no review for accuracy and completeness is possible. We conclude all four tribes must have new notice which complies with the ICWA and state statutes and rules.

### **DISPOSITION**

The orders terminating parental rights are reversed and the matter is remanded for the limited purpose of providing new notice to the three Cherokee tribes and the Blackfeet tribe. If, after proper notice, the juvenile court finds there was no response or

the tribe(s) determined that the minor is not an Indian child, the orders shall be reinstated. However, if a tribe determines the minor is an Indian child and the juvenile court determines the ICWA applies to this case, the juvenile court is ordered to conduct a new selection and implementation hearing pursuant to Welfare and Institutions section 366.26, in conformance with all provisions of the ICWA.

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MURRAY, J.

We concur:

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RAYE, P. J.

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MAURO, J.