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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

N.M.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN JOAQUIN
COUNTY,

Respondent;

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY ET AL.,

Real Parties in Interest.

C072290

(Super. Ct. No. J05827)

Petitioner N.M., mother of the dependent minor, seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate the orders of the juvenile court made at the disposition hearing denying reunification services and setting a Welfare and Institutions

Code¹ section 366.26 hearing. Mother contends that the juvenile court failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). Mother also requested a stay of proceedings in the respondent court. We granted a stay of the section 366.26 hearing in the respondent court pending the resolution of this writ petition and permitted real party in interest San Joaquin County Human Services Agency to late file opposition to the writ petition. We shall issue a peremptory writ of mandate directing the juvenile court to vacate its ICWA findings and conduct further proceedings to determine whether ICWA notice is complete.

BACKGROUND

A section 300 petition was filed on behalf of the minor on October 7, 2011. At that time, the social worker for San Joaquin County Human Services Agency (HSA) indicated she had spoken with father and been informed he had Cherokee heritage. Accordingly, on November 15, 2011, HSA sent ICWA notice to the Bureau of Indian Affairs (BIA), the Cherokee Nation of Oklahoma (Cherokee Nation), the United Keetoowah Band of Cherokee Indians, and the Eastern Band of Cherokee Indians. The notice contained: father's full name, current address, date and place of birth, and tribal affiliations; the first and last names of the paternal grandmother and her current city of residence; the first and last names of the paternal grandfather, his current state of residence, and his tribe and band affiliations; the first and last names of the paternal great-grandmother; and the first and last names of the paternal great-grandfather and his tribal affiliations.

The Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians responded that the minor was not eligible for membership. The Cherokee Nation sent a letter dated December 28, 2011, "requesting additional

¹ Further undesignated references to rules are to the California Rules of Court and to code sections are to the Welfare and Institutions Code.

information that includes paternal grandparent's and great-grandparent's complete names and dates of birth.”

On January 11, 2012, HSA sent amended ICWA notice to the BIA and all three Cherokee tribes, adding additional information to include: the paternal grandmother's date and place of birth; the paternal grandfather's location, city and state of residence; the paternal great-grandmother's first and last names, date and place of birth; the other paternal great-grandmother's first and last name; the paternal great-grandfather's full name, current address, month and day of birth, and place of birth, and tribal affiliations; the first and last names of the great-aunt, her current address, date and place of birth, and tribal affiliation; and the first and last names of the great, great-grandfather, city and state of residence, and tribal affiliation.

On February 28, 2012, the Cherokee Nation sent a letter “requesting additional information that includes; paternal grandfather, Michael West and paternal great-grandfather, Leo Smith's middle names and dates of birth.”²

The March 14, 2012, disposition report implied the social worker had no contact with the paternal grandparents, stating they would be permitted reasonable visitation with the minor should they come forward and be assessed as appropriate. The following week, the Cherokee Nation sent a letter stating they were closing the inquiry since the additional required information had not been sent. The letter further reminded HSA to send additional information if it were obtained at some point in the future..

On June 8, 2012, HSA informed the court that the paternal grandmother was being assessed for placement. Thereafter, on July 16, 2012, HSA filed a declaration of ICWA efforts, stating: “I have now received responses for the aforementioned [three Cherokee] tribes (see attached letters). The Cherokee Nation has requested for the paternal

² Leo Smith was actually listed in the amended ICWA notice as the paternal great-great-grandfather.

grandfather, Michael West, and the paternal great-grandfather's [sic], Leo Smith, middle names and dates of birth. The social worker, Charyl Carlson, mentioned that the father, [. . .], does not have any information regarding the middle names of Michael West and Leo Smith. Nor does he have any additional information regarding his family. [¶] Based on the information provided, I respectfully request that the court make a ruling on ICWA." Paternal grandmother appeared in court on the issue of placement on July 30, 2012, and again on October 1, 2012. The August 2012 supplemental disposition report reflects that HSA had substantive contact with the paternal grandmother in assessing potential placement. The record does not reflect any further information regarding the ongoing ICWA inquiry.

At the disposition hearing, HSA requested the juvenile court rely on the July 16, 2012, declaration of efforts and make ICWA findings. Counsel for the parties submitted without comment and the juvenile court found HSA had made proper inquiry and ICWA did not apply.

DISCUSSION

Congress passed the ICWA "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195; 25 U.S.C. § 1902; *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30 [104 L.Ed.2d 29].)

A social worker has "an affirmative *and continuing* duty to inquire whether a child [in a § 300 proceeding] is or may be an Indian child" (§ 224.3, subd. (a), italics added.) Furthermore, if the social worker "has reason to know that an Indian child is involved, the social worker . . . is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents,

Indian custodian, *and extended family members* to gather the information” required to be provided in the ICWA notice. (§ 224.3, subd. (c), italics added.)

Here, HSA knew that father had reported Cherokee heritage. The Cherokee Nation specifically requested the middle names and birthdates for the paternal grandfather and great-grandfather. Although it appears likely that HSA did get some additional information (directly or indirectly) from father’s relatives, since the amended ICWA notice contained a significant amount of additional information, the record does not establish whether HSA made a reasonable inquiry of father’s relatives to attempt to obtain the missing information requested by the Cherokee Nation.

Specifically, we note that the amended ICWA notice does not contain the paternal grandmother’s complete address and that, at the time the amended ICWA notice was sent, the paternal grandparents had not yet “come forward.” Although HSA subsequently indicated it was assessing the paternal grandmother for placement, the ICWA compliance declaration, filed three weeks thereafter, does not mention any attempt to obtain the requested information from grandmother. Further, she appeared in court on July 30, 2012, to discuss the matter of placement and was, therefore, available to HSA to fulfill its obligation to make continuing efforts to obtain the information previously requested by the Cherokee Nation. The record, however, does not affirmatively indicate any such efforts were made.

Accordingly, we must grant the petition to assure compliance with ICWA.

With respect to petitioner’s request for this court’s independent review of the record for possible error, we disregard the briefing’s content beyond that required by California Rules of Court, rule 8.452(b) and decline to undertake such review.³

³ Counsel for petitioner should be well aware of the *Phoenix H.* procedure, which is an exception to the well-settled rule that this court has neither the obligation nor the discretion to review the record in search of error not raised by counsel. (*In re Sara H.*

DISPOSITION

Let a peremptory writ of mandate issue, directing respondent juvenile court to vacate its findings that adequate ICWA notice was given and that the ICWA does not apply. The juvenile court is further directed to order HSA to make reasonable inquiry of the paternal relatives, specifically, the paternal grandmother, as set forth in California Rules of Court, rule 5.481(4)(A) and to provide the Cherokee Nation with the requested information, if obtained. The juvenile court is then directed to enter updated ICWA findings prior to proceeding with a section 366.26 hearing. Having served its purpose, the stay previously issued by this court is vacated.

DUARTE, J.

We concur:

ROBIE, Acting P.J.

BUTZ, J.

(1997) 52 Cal.App.4th 198, 201; *In re Phoenix H.* (2009) 47 Cal.4th 835.) Further, counsel should know that these proceedings are confidential; by serving a nonparty with petitioner's filings, counsel has necessitated that this court take measures to retrieve the improvidently served document. (See § 827.)