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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re E.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

TOMMY D.,

Defendant and Appellant.

D062245

(Super. Ct. Nos. NJ14281)

APPEAL from an order of the Superior Court of San Diego County, Michael Imhoff, Commissioner. Affirmed.

Tommy D. appeals from an order terminating his parental rights under Welfare and Institutions Code section 366.26.¹ The sole issue on appeal is whether the matter

¹ Unless otherwise specified, further statutory references are to the Welfare and Institutions Code.

must be remanded for compliance with notice requirements of the Indian Child Welfare Act, title 25 United States Code sections 1901 et seq. and section 224 et seq. (ICWA).

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Tommy D. is the biological father of E.C., who was born in January 2009. On June 26, 2012, the juvenile court terminated Tommy's parental rights. Tommy contends the order terminating parental rights must be reversed and the matter remanded to allow the juvenile court and the San Diego County Health and Human Services Agency (Agency) to comply with ICWA notice requirements under California law. (§ 224 et seq.)

In May 2010, the Agency initiated dependency proceedings on E.C.'s behalf after her mother, Summer C., led police on a high-speed chase. E.C. was not restrained in a car seat during the incident. The Agency detained 16-month old E.C. in protective custody. Tommy's whereabouts were unknown for a short time.

Summer filed form ICWA-020, Parental Notification of Indian Status, declaring to the best of her knowledge she did not have any Indian ancestry. She told the social worker that no family member ever participated in any tribal activities, lived on an Indian reservation or accepted tribal services or assistance. At the detention hearing, the court found that ICWA did not apply.

In a report prepared for the jurisdictional and dispositional hearings, which were held on July 21, 2010, the social worker reported that Tommy had denied any Indian heritage in a dependency case involving another child.

At some point during the summer of 2010, Tommy returned to Georgia. He did not appear in E.C.'s dependency proceedings.

In January 2011, the Agency detained E.C. from the relative who had been caring for her and filed a supplemental petition seeking another level of placement for her. The juvenile court appointed counsel for Tommy, who was incarcerated in Georgia on probation violations. Through counsel, Tommy filed form ICWA-020. Tommy checked a box stating "I may have Indian ancestry" and named the tribe as "Cherokee." Form ICWA-020 also requires the parent to state whether the parent or child were or may be a member of, or eligible for membership, in a tribe, and whether one or more of the parent's parents, grandparents, or other lineal ancestors, is or was a member of a federally recognized tribe. Tommy left those line items blank.

On January 31, the juvenile court ordered paternity testing for Tommy and ordered him to complete the "ICWA long form" (form ICWA-30 "Notice of Child Custody Proceeding for Indian Child"). This form requests detailed information about the child's relatives and is more comprehensive than form ICWA-20.

In March, the juvenile court deferred the ICWA finding and ordered Tommy to complete form ICWA-30. In April, the court continued the hearing to allow Tommy to complete form ICWA-30. In June, father's counsel advised the court she was having difficulty contacting Tommy.

At the 12-month status review hearing on July 21, 2011, the juvenile court found that Summer had made substantial progress and continued reunification services to the

18-month hearing date. The court found that ICWA did not apply, "as reiterated from a prior order."

Summer died in October 2011. Tommy was released from jail in early December. The Agency did not know his whereabouts until April 2012. On April 25, the social worker telephoned Tommy and asked him about his Indian heritage.² Tommy said he had been told that he had some Native American history but knew of no connection to a specific tribe. As far as he knew, none of his relatives had ever been enrolled in a tribe, received tribal benefits or attended an Indian school.

The section 366.26 hearing was held on June 26, 2012. Tommy was present in E.C.'s dependency proceedings for the first time. The juvenile court did not inquire about Tommy's alleged Indian heritage and the issue was not raised by the parties. In her section 366.26 reports, the social worker recommended the court find that ICWA did not apply. The juvenile court did not make any oral findings concerning ICWA. The minute order from the hearing states ICWA notice was not required because "the court knows the child is not an Indian child".

² On September 25, 2012, the Agency filed a motion in this court to augment the appellate record with minute orders from the dependency case of Tommy's other child, and with an ex parte application and order to supplement the record with information inadvertently omitted from the Agency's addendum report of June 8, 2012 (Exhibit D). The ex parte application included the information about the social worker's and Tommy's April 25 telephone conversation, as detailed above. That order was granted by the juvenile court. The Agency also asked this court for relief from its untimely motion on a showing of good cause. On October 12, this court denied the motion to augment. On October 17, this court amended its October 12 order by granting the Agency's requests for relief from its untimely motion and to augment the record as to Exhibit D only.

DISCUSSION

Tommy contends the juvenile court erred when it found that ICWA did not apply. He argues he informed the court on January 31, 2011 that he had Cherokee heritage; therefore the court and Agency had information that E.C. was or might be an Indian child. Tommy maintains this information was sufficient to trigger ICWA notice requirements. We are not persuaded by his argument.

ICWA protects the interests of Indian children, their tribes and families by establishing minimum federal standards for proceedings involving foster care placement or termination of parental rights. (25 U.S.C. § 1912; *In re Jack C.* (2011) 192 Cal.App.4th 967, 977 ["ICWA sets forth minimum substantive and procedural standards to protect the interests of Indian children, Indian families and Indian tribes"].) Under California law, the court and county welfare department have an affirmative and continuing duty to inquire in all dependency proceedings whether a dependent child is or may be an Indian child. (§ 224.3, subd. (a).) The circumstances that may provide reason to know the child is an Indian child exist when a member of the child's extended family provides information that suggests one or more of the child's biological parents, grandparents or great-grandparents are or were a member of a tribe, the residence of the child or the child's family is in a predominantly Indian community or the child or the child's family has received Indian services or benefits. (§ 224.3, subd. (b).)

If the court or social worker receives information suggesting that an Indian child is involved in the proceedings, the social worker must make further inquiry regarding the possible Indian status of the child by interviewing the parents and extended family

members, contacting the Bureau of Indian Affairs for assistance in identifying the tribe and contacting the tribes and any other person that can reasonably be expected to have information regarding the child's membership or eligibility. (§ 224.3, subd. (c).) If, after further inquiry, the court or social worker knows or has reason to know the child is an Indian child, the social worker must provide notice in accordance with section 224.2, subdivision (a)(5). (§ 224.3, subd. (d).)

The record shows that the social worker complied with California's ICWA requirements. After learning that Tommy had some Cherokee or unspecified Indian heritage, the social worker asked him for more information. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 256 [duty of inquiry triggered by receipt of information suggesting the child is an Indian child].) Tommy had no other information about his family's Indian heritage. The social worker fulfilled her affirmative duty to inquire whether the child was or may be an Indian child. (§ 224.3, subd. (a).) Tommy's responses to her inquiry did not provide reason to know the child was an Indian child. (§ 224.3, subd. (b).) On this record, the court or social worker was not required to provide ICWA notice in accordance with section 224.2, subdivision (a)(5). (§ 224.3, subd. (d); *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539 [an attenuated, speculative or vague claim of Indian heritage is insufficient to trigger notice requirements under ICWA].)

DISPOSITION

The order terminating parental rights is affirmed.

BENKE, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.