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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.O., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

E055222

(Super.Ct.No. RIJ120682)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed with directions.

Megan Turkkat-Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County
Counsel, for Plaintiff and Respondent.

J.B. (Mother) appeals after the termination of her parental rights to minor S.O. at a Welfare and Institutions Code section 366.26¹ hearing. Mother appeals on the ground that the Indian Child Welfare Act (ICWA) notice was insufficient.² We agree that the notice provisions of ICWA were not adequately complied with and will remand the matter for that limited purpose. We otherwise find no error.

I

PROCEDURAL AND FACTUAL BACKGROUND³

A. *Detention*

On November 20, 2010, five-month-old S.O. was detained by the Riverside County Department of Public Social Services (the Department).⁴

On that day, a search was conducted at the home where Mother and Father were staying with S.O. A roommate at the location had a probation search condition, and a

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² A.O. (Father) filed a notice of appeal on January 6, 2012. However, on April 4, 2012, Father filed a notice of abandonment of appeal because he did not want to disrupt the stability that S.O. had in her current placement. We dismissed Father's appeal on April 5, 2012, by written order. Mother had stated in her opening brief that she was joining in any argument raised by Father. Since Father did not file a brief, there are no arguments for Mother to join.

³ Since the only issue raised on appeal is the insufficient ICWA notice, we only briefly summarize the facts pertaining to the reasons for the detention of S.O. and the progress made by Mother and Father during the proceeding and focus on the ICWA notice.

⁴ S.O.'s six-year-old half sister was also detained but was eventually placed with her father, and the dependency as to her was terminated. She is not a subject of this appeal.

search was conducted by law enforcement officials pursuant to that condition. Mother was at the residence and was under the influence of methamphetamine.

Methamphetamine and drug paraphernalia were found in the home. The home was in deplorable condition. There were six dogs and three cats in the home, with pet feces and urine throughout the home. S.O.'s playpen smelled of urine. Mother was arrested for her drug use and child endangerment, and Father, who arrived home during the search, was arrested because he was also under the influence of methamphetamine and for child endangerment. Mother admitted that she used methamphetamine weekly.

In the detention report, the social worker from the Department noted that ICWA may or may not apply. Since Mother and Father were incarcerated, they were not questioned regarding their Native American ancestry. On November 21, 2010, the Department spoke with maternal grandmother, D.D., who denied any Native American ancestry on the maternal side of the family. On November 20, 2010, D.D. expressed an interest in taking S.O. However, an emergency placement assessment revealed that she had an adult residing in her home who had a child abuse allegation against him.

On November 23, 2010, the Department filed a section 300 petition against Mother and Father, alleging a failure to protect (§ 300, subd. (b)) due to their use of methamphetamine in the home and the home being in an unsanitary condition, and no provision for support (*id.*, subd. (g)) because both Father and Mother were incarcerated.

On November 24, 2010, the juvenile court found a prima facie case and ordered S.O. detained in the custody of the Department. Father completed an ICWA 020 form

and stated that he had no Indian ancestry. Mother completed an ICWA 020 form stating she might be affiliated with the Blackfeet tribe. She provided that her father, J.D., was the person with Indian ancestry. Mother agreed to waive time for the appropriate ICWA notices. The trial court noted that there was indication of Blackfeet heritage. The Department was ordered to notify all identified tribes and the Bureau of Indian Affairs (BIA). ICWA notices were given, as will be discussed, *post*.

B. *Jurisdiction/Disposition*

In a jurisdictional/dispositional report filed on December 21, 2010, the Department recommended that reunification services be granted to Mother and Father. It also recommended striking the section 300, subdivision (g) allegations because both Father and Mother had been released from custody.

Mother reported that she used methamphetamine once or twice a week and had been diagnosed with obsessive compulsive disorder. Mother was on informal probation after pleading guilty to misdemeanor child endangerment in this case. Father admitted to weekly drug use but was willing to enter rehabilitation. Father and Mother were willing to work to get custody of S.O. back. If they were unable to take custody, Father and Mother wanted S.O. to be placed with paternal grandparents. Their home was being assessed by the Department for placement.

A contested jurisdictional/dispositional hearing was conducted on January 4, 2011. Mother and Father were present, waived their rights to an evidentiary hearing, and submitted on the matter. The juvenile court found the allegations under section 300,

subdivision (b) of the petition true. The allegations under section 300, subdivision (g) were found not true. Reunification services were ordered for the parents.

C. *Six-month Review Report and Hearing*

According to the six-month status review report filed on June 15, 2011, the Department was recommending termination of reunification services for Mother and Father and that a section 366.26 hearing be set. It was recommended that S.O. be adopted by the paternal grandparents, with whom S.O. was currently residing. S.O. considered the grandmother to be her mother and was very bonded to her. Mother and Father continued to struggle with substance abuse and had not made any substantial progress in treatment. The home remained a mess. Mother and Father reportedly had violated their probation. They were not consistent in visitation.

The contested section 366.21, subdivision (e) hearing was conducted on July 19, 2011. The juvenile court terminated reunification services and set a section 366.26 hearing.

D. *Report for Section 366.26 Hearing*

On October 25, 2011, the Department filed a section 366.26 report. The recommendation was to terminate the parental rights of Father and Mother. The permanent plan was adoption by the paternal grandparents. S.O. had no emotional or physical disabilities. The paternal grandparents had been married for 21 years and had stable income. They had other children who still lived in the home. S.O. was bonded to both grandparents.

E. *Section 366.26 Hearing*

The contested section 366.26 hearing was conducted on November 16, 2011.⁵ The juvenile court terminated the parental rights of Father and Mother and freed S.O. for adoption by the paternal grandparents. Mother filed a timely notice of appeal.

II

ICWA NOTICE

Mother contends the jurisdictional findings and orders must be reversed due to the juvenile court's failure to provide adequate notice pursuant to the ICWA.

A. *Background*

On December 21, 2010, ICWA notice was sent. S.O.'s full name and date of birth was listed. Mother's name was listed three ways, and the tribe was listed as the Blackfeet Tribe. Mother's mother, D.D., was listed with her full name and current city of residence. No other information was provided, such as her place or date of birth. A.O. was listed with his birthdate. The paternal grandmother's name was listed with no other information. J.D. was listed as the maternal grandfather. The only other information provided was that he claimed to belong to the Blackfeet tribe. No further information was given as to Mother's or Father's other relatives, including S.O.'s great-grandparents. Notice was sent to the Blackfeet Tribe of Montana, the BIA, and the United States Department of the Interior.

⁵ Father filed a section 388 petition that was heard at the same time and denied.

Mother explained to the Department that J.D. was in the military reserves. J.D. and D.D. had been married for 30 years but were divorced in 2009.

A jurisdictional/dispositional hearing was to be held on December 27, 2010, but it was continued as contested. At the hearing, counsel for Mother was present, but Mother was not. The juvenile court stated, “Now, I have ICWA notices that were just sent on behalf of both children. Do either parents’ counsel have any objection to the information contained in the ICWA notices?” Mother’s counsel responded, “No objection.” The juvenile court then stated, “Is there more information that could be included that we don’t have? You can provide it to us now. [¶] So hearing no objections, it appears that the notice is in proper form. . . .”

At the contested jurisdictional/dispositional hearing on January 4, 2011, the juvenile court again stated that “good” notice had been given.

On June 1, 2011, the Department submitted documentation on the ICWA notice. Responses had been received from the United States Department of the Interior and the Blackfeet Tribe. It did not find a listing for Mother, Father, or J.D.

At the review hearing, the Department stated, “In regards to ICWA, the Court did find good notice . . . at the jurisdictional hearing on December 27, 2010. It has been over 60 days since the court found good notice, and we have not received any confirmation from any tribe indicating that the child is eligible . . . for enrollment. We do not believe that ICWA applies.” The juvenile court responded, “We do have good notice under [ICWA]. The Court will further find that [ICWA] does not apply.”

B. *Analysis*

ICWA was enacted to protect the interests of Indian children and to promote the stability and security of Indian tribes and families. (*In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 906.) “[O]ne of the primary purposes of giving notice to the tribe is to enable the tribe to determine whether the child involved in the proceedings is an Indian child. [Citation.]” (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 470.) “Courts have consistently held failure to provide the required notice requires remand unless the tribe has participated in the proceedings or expressly indicated they have no interest in the proceedings.” (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.)

“ICWA notice requirements are strictly construed. [Citation.] The notice sent to the BIA and/or Indian tribes must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child’s name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child’s parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.] To enable the juvenile court to review whether sufficient information was supplied, [the Department] must file with the court the ICWA notice, return receipts and responses received from the BIA and tribes.” (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.)

In addition, as a matter of California law, if the court or the social worker “knows or has reason to know that an Indian child is involved,” the social worker must “make

further inquiry regarding the possible Indian status of the child . . . by interviewing the parents . . . and extended family members . . . and contacting . . . any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.” (Welf. & Inst. Code, § 224.3, subd. (c).)

“The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] We review the trial court's findings for substantial evidence. [Citation.]” (*In re E.W.* (2009) 170 Cal.App.4th 396, 404; accord, *In re N.M.* (2008) 161 Cal.App.4th 253, 264.)

In the present case, the notices included incomplete information about Mother's relatives, specifically, the maternal grandfather, J.D. and his parents (the maternal great-grandparents), who are the relatives with Indian heritage. Mother claimed that maternal grandfather had ancestry in the Blackfeet tribe. The Department was in contact with maternal grandmother, who had been married to maternal grandfather for 30 years and had only divorced in 2009. The record does not show if the Department made any inquiry of D.D. as to J.D.'s birthdate and address. Further, maternal grandmother certainly knew the names of her in-laws, the great-grandparents of S.O., on J.D.'s side of the family. Here, we agree with Mother that the Department had an obligation to make further inquiry. Because incomplete information was provided in the notices to the tribes, there is insufficient evidence to support the conclusion that ICWA does not apply.

We note that the trial court on several occasions asked Mother if the notices were sufficient, and she had no objection to the notices. As many decisions have recognized,

the notice requirements serve the interests of the Indian tribes irrespective of the positions of the parents and cannot be waived by the parent. (See, e.g., *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267.)

The Department contends that any error in giving the ICWA notice was harmless. We disagree. The tribes did not have a meaningful opportunity to search the tribal registry due to the insufficient information. (See, e.g., *In re S.M.* (2004) 118 Cal.App.4th 1108, 1113, 1115-1118 [because notice contained no information about child's purported Indian grandmother and great-grandmother, tribes could not conduct a meaningful search].)

Despite contact with maternal grandmother, the Department stated J.D.'s birthdate and address were unknown. Further, there was absolutely no information provided as to S.O's great-grandparents. J.D. and D.D. were married for over 30 years and only divorced in 2009. D.D. must have had some of this information. Without knowing whether and to what extent the Department, with reasonable diligence, could have obtained and provided additional family history information described in the ICWA provisions, we are unable to discern whether there is a reasonable probability the relevant tribes would still have been unable to determine that the child was an Indian child.

The Department did not comply with ICWA's notice requirements because it appears it did not supply the Indian tribes with all available information. On this record, we cannot find the Department substantially complied with ICWA's notice requirements,

and we will remand the matter. (*Tina L. v. Superior Court* (2008) 163 Cal.App.4th 262, 268.)

III

DISPOSITION

The juvenile court shall order the Department to give notice in compliance with the ICWA and related federal and state law. Specifically, they shall be ordered to give valid notice to the Blackfeet tribe and the BIA. Inquiry should be made of maternal grandmother, D.D., as to the birthdate and address of J.D. and the names of S.O.'s great-grandparents.

Once the juvenile court finds that there has been substantial compliance with the notice requirements of the ICWA, it shall make a finding with respect to whether the children are Indian children. (See Cal. Rules of Court, rule 5.664(g)(5).) If at any time within 60 days after notice has been given there is a determinative response that the children are or are not Indian children, the juvenile court shall find in accordance with the response. (Cal. Rules of Court, rule 5.664(g)(1), (4).) If there is no such response, the juvenile court shall find that the children are not Indian children. (Cal. Rules of Court, rule 5.664(f)(6).)

If the juvenile court finds that the children are not Indian children, it shall reinstate the original order terminating parental rights.

If the juvenile court finds that the children are Indian children, it shall set a new section 366.26 hearing and it shall conduct all further proceedings in compliance with the ICWA and related federal and state law.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.