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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.A. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

E055310

(Super.Ct.No. RIJ117358)

OPINION

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

Marissa Coffey, 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.

R.C. (father) appeals from the juvenile court's order of November 23, 2011, reinstating a prior order terminating his parental rights to his two sons, E.A and D.C. (the children).¹ Father challenges the juvenile court's findings at this hearing that the Department of Public Social Services (DPSS) complied with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA), and that ICWA does not apply. The juvenile court made these findings after the case was remanded by this appellate court so DPSS could include available information about the paternal grandfather in its notices to the Indian tribes. In this second appeal, father contends the juvenile court's ICWA findings are in error because DPSS failed to mail the improved notices to certain Apache and Creek tribes, to which it had previously provided notice. As discussed below, we agree with DPSS that father waived this issue on appeal after remand because father also received the notices three months prior to the November 23, 2011 hearing and failed to raise the issue at that time.

FACTS AND PROCEDURE²

In December 2008, father and the children's mother, both teenagers at the time, brought four-month-old E.A. to the emergency room with a broken leg. Because the

¹ The children's mother is not a party to this appeal.

² Except where otherwise noted, this statement of facts and procedure is taken from our nonpublished opinion in the prior appeal. (*In re E.A.* (May 20, 2011, E051575).)

treating physician suspected child abuse, DPSS was called and a petition under Welfare and Institutions Code,³ section 300 was filed. The juvenile court ordered E.A. detained.

In August 2009, DPSS also filed a section 300 petition regarding E.A.'s newborn brother, D.C.

Based on information provided by maternal and paternal relatives, DPSS sent ICWA notices to 70 tribes because the relatives claimed ancestors with possible connections to Cheyenne, Cherokee, Apache, Sioux, Shoshone and Natchez tribes. None of the tribes responded that the children were Indian children.

On February 22, 2010, the juvenile court held a hearing combining the six-month review hearing for E.A. and the jurisdiction/disposition hearing for D.C. Regarding both children, the court found that ICWA notice had been given as required by law and that ICWA does not apply. The court then terminated reunification services regarding E.A., took jurisdiction over D.C. and denied reunification services regarding D.C. Regarding both children, the court set a section 366.26 hearing for June 24, 2010.

On July 27, 2010, the juvenile court terminated the parents' parental rights and set adoption by the current caretakers as the permanent plan. Both parents appealed and challenged the sufficiency of the ICWA notices.

This court found that DPSS knew the name, birth date and address of the paternal great grandfather, but failed to include it in the notices sent to the various Indian tribes. We held that the information included in the notices to the tribes lacked information

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

known by DPSS as to the paternal grandfather, which was clearly required by ICWA and, therefore, the notices were inadequate under ICWA. (*In re E.A., supra*, E051575.)

In response to this court's opinion, DPSS re-sent the ICWA notices on August 25, 2011. The new notices included the paternal grandfather's name, birth date and address. DPSS also included information regarding the paternal great-great-grandmother, Annie C., in the notices pursuant to the recommendation of this court. (*In re E.A., supra*, E051575.)

These ICWA notices did not include "Apache" as a tribe or tribes to which the children's relatives were affiliated. In addition, the notices were not mailed to any Apache or Creek tribe, other than the Muscogee Creek Nation of Oklahoma.

The notices were mailed to father on August 25, 2011—nearly three months prior to the November 23, 2011 hearing at which time the juvenile court considered the adequacy of the notices and determined whether proper postremand ICWA noticing had been accomplished.

At this November 23, 2011 hearing, father was not present, but was represented by counsel. Counsel at no time raised any challenge to the sufficiency of the ICWA noticing. The juvenile court found that ICWA noticing had been accomplished and that ICWA does not apply because no tribe responded that the children were Indian children. The court then reinstated its July 27, 2010 order terminating parental rights. This appeal, by father only, followed.

DISCUSSION

Father argues that the juvenile court erred in finding ICWA does not apply because the ICWA notice requirements were not satisfied. Father points out that DPSS did not send the improved ICWA notices to all of the required tribes—specifically the Apache and Creek tribes, with the exception of the Muscogee Creek Nation of Oklahoma. Because of this noticing failure, father contends the court erred when it reinstated the order terminating his parental rights, and asks us to reverse this order. As explained briefly below, we decline to apply the normal rule against forfeiture to again reverse the order terminating parental rights and freeing the children for adoption because, at this postremand stage in the dependency proceedings, the children’s interest in permanency and stability outweighs the Indian tribes’ rights under ICWA.

Father did not object to the adequacy of the notices at the hearing. Father may not challenge the adequacy of the ICWA notice on appeal if he failed to raise a proper objection at the hearing following a limited remand. (*In re X.V.* (2005) 132 Cal.App.4th 794, 798 [“The purposes of the ICWA are indeed commendable, but we do not believe Congress envisioned or intended *successive* or *serial* appeals on ICWA notice issues when, given a proper objection, they could easily be resolved during proceedings on remand for the specific purpose of determining whether proper notice was given”]; see also *In re Amber F.* (2007) 150 Cal.App.4th 1152, 1156 [“[Mother] had ample opportunity to review and correct the many documents involved in the second round of notices. Having failed to object to errors below, she has forfeited her right to do so on appeal”]; *In re N.M.* (2008) 161 Cal.App.4th 253, 269 [“The parties may not object to the

adequacy of ICWA notice on appeal if they failed to raise a proper objection at the special hearing after a remand”]; and *In re Z.W.* (2011) 194 Cal.App.4th 54, 67 [“A line has to be drawn. At some point, there must be finality to the ICWA noticing process. Balancing the minor’s interest in permanency and stability against the tribes’ rights under the ICWA, we draw the line in this case”].)

At the time of the latest hearing on November 23, 2011, E.A. had been in foster care for nearly three years, after having been in his parents’ care for only four months. D.C. had been in the foster system for all but one week of his 27 months of life. For this reason, this case fits well within the parameters of the cases cited above, in which the interests of the children in permanence and stability override the tribes’ rights under ICWA and justify departing from the usual presumptions against forfeiture. The juvenile court’s rulings at the hearing on November 23, 2011, are affirmed.

DISPOSITION

The juvenile court’s rulings are affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.