

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

E057155

(Super.Ct.No. J237587)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Reversed with directions.

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

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County
Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, S.G. (Mother), appeals from an order terminating her parental rights with respect to her son, R.C. The order was made at a hearing held pursuant to Welfare and Institutions Code section 366.26.¹

Mother contends that plaintiff and respondent, San Bernardino County Children and Family Services (CFS), failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act (25 U.S.C.A. § 1902) (ICWA) and related California law (Welf. & Inst. Code, §§ 224.2, 224.3). In particular, Mother asserts that the notice CFS sent to Indian tribes pursuant to the ICWA failed to include information regarding R.C.'s ancestors that CFS could have obtained from available sources.

In response, CFS states that it “concedes that Mother’s argument is essentially correct.” CFS agrees that the “ICWA notice was missing much of the required information about [R.C.’s] ancestors that may have been reasonably available to CFS” CFS concludes by stating that we should conditionally reverse the order terminating parental rights to allow “for a new ICWA notice process.”

We agree with the parties and conditionally reverse the court’s order.

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

II. FACTUAL AND PROCEDURAL SUMMARY²

Mother was 16 years old when R.C. was born in November 2010. At that time, Mother was a juvenile dependent residing in a foster care placement.

In February 2011, when R.C. was three months old, Mother exhibited signs of depression and made suicidal threats. She was placed in Loma Linda Behavioral Medical Center pursuant to section 5150.³ R.C.'s father (Father) has a history of mental health concerns and was unable to provide for the child. CFS took R.C. into protective custody and placed him with Mother's foster mother.

CFS filed a petition under section 300, subdivision (b), alleging that R.C. came within the jurisdiction of the court due to the parents' mental health issues and their inability and unwillingness to parent and care for R.C.

At a detention hearing held on February 23, 2011, the court ordered R.C. removed from the parents and placed in foster care. On the same date, Mother and Father filed a Parental Notification of Indian Status (Judicial Council form ICWA-020) stating that each may have Cherokee Indian ancestry.

CFS sent Notices of Child Custody Proceeding for Indian Child (Judicial Council form ICWA-030) to the United Keetoowah Band of Cherokee Indians in Oklahoma, the

² Because the only issue raised on appeal involves compliance with the ICWA, our summary of the facts is focused on that issue only.

³ Under section 5150, a person may, upon probable cause, be taken into custody for 72 hours for treatment and evaluation if the person, as a result of mental disorder, is a danger to others, or to himself or herself.

Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the U.S. Department of the Interior, Bureau of Indian Affairs (BIA).

In the ICWA notice to the tribes, CFS provided the following biological information regarding R.C.: Mother's and Father's names and dates of birth; the name and birthdate of R.C.'s deceased maternal grandmother; the name and place of birth of R.C.'s paternal grandmother; the names of R.C.'s maternal grandfather and paternal grandfather; the names of R.C.'s paternal great-grandmothers and paternal great-grandfather; and the name, city of residence, and month and date (but not the year) of birth of the paternal great-grandfather.

Each of the three tribes to which the ICWA was sent responded by stating that it does not consider R.C. an Indian child based on the information provided to them.

At a jurisdictional/dispositional hearing, the court found true allegations concerning the parents' mental health and their inability to parent and provide adequate care for R.C. The court declared R.C. a dependent of the juvenile court and ordered reunification services for the parents.

At a review hearing on June 20, 2011, the court found that the ICWA did not apply and that no further notice was required.

In a report prepared for the six-month review hearing, CFS recommended the court terminate reunification services and set a hearing to be held pursuant to section 366.26. However, following a mediation, CFS changed its recommendation to provide

for continued services. At the hearing, the court adopted the revised recommended findings and set a 12-month review hearing.

At the 12-month review hearing, the court terminated reunification services and set a hearing to be held pursuant to section 366.26.

At the section 366.26 hearing, the court terminated the parents' parental rights concerning R.C. and selected adoption as the child's permanent plan.

Mother appealed.

III. DISCUSSION

Mother contends the court erred in finding the ICWA does not apply because CFS did not fulfill its duty of inquiry under the ICWA and California law and the notices sent to the Indian tribes contained insufficient information regarding R.C.'s ancestry. We agree.

The ICWA was enacted "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C.A. § 1902.) "The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) To this end, section 1911 of the ICWA allows a tribe to intervene in state court dependency proceedings. (25 U.S.C.A. § 1911(c).)

Notice of the proceedings is required to be sent whenever it is known or there is reason to know that an Indian child is involved. (25 U.S.C.A. § 1912(a); Welf. & Inst.

Code, § 224.2, subd. (a); see *In re Desiree F.*, *supra*, 83 Cal.App.4th at p. 469.) Notice serves a twofold purpose: “(1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction.” (*In re Desiree F.*, *supra*, at p. 470.) No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe (or the BIA where the tribe is unknown) receives notice. (25 U.S.C.A. § 1912(a); *In re A.B.* (2008) 164 Cal.App.4th 832, 838.)

In addition to the child’s name and date and place of birth, if known, the notice is required to include the “name of the Indian tribe in which the child is a member or may be eligible for membership, if known.” (§ 224.2, subd. (a)(5)(B).) The notice is also required to contain “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, . . . as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.” (§ 224.2, subd. (a)(5)(C).)

Juvenile courts and child protective agencies have “an affirmative and continuing duty” to inquire whether a dependent child is or may be an Indian child. (*In re H.B.* (2008) 161 Cal.App.4th 115, 121; § 224.3; Cal. Rules of Court, rule 5.481.) As soon as practicable, the social worker is required to interview the child’s parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child’s membership status or eligibility.

(§ 224.3, subd. (c); *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539; Cal. Rules of Court, rule 5.481(a)(4).)

In this case, the ICWA notices included: the name and birthplace of the paternal grandmother; the name and birthdate of the maternal grandmother; and the names of the paternal grandfather, maternal grandfather, paternal great-grandmothers, and paternal great-grandfather. No other identifying information was provided for these ancestors. The names and all identifying information was left blank for the maternal great-grandmother and maternal great-grandfather.

CFS did not describe what actions it took to obtain information about R.C.'s ancestors. Mother points out that she was a juvenile dependent while this case proceeded, and Father or his siblings were juvenile dependents.⁴ Their juvenile dependency records presumably contain information about their relatives. Mother also asserts that maternal and paternal relatives were in contact with CFS during these proceedings who could have provided information missing from the ICWA notice. For example, R.C.'s paternal grandmother was in contact with the social worker at a time when the parents were living with her. Despite such contact, the ICWA notice listed only the grandmother's name, not her address and date of birth.

⁴ The jurisdictional/dispositional report states that Father grew up in San Bernardino where he lived with his grandparents. He told the social worker: “My mom just gave me away because she was too young to take care of me. [Child protective services] took my siblings, and they just left me. I don’t know why. Some of my siblings were adopted out, and I have no idea where they are now.”

CFS does not dispute Mother's contentions. Indeed, the agency identifies six specific omissions in the ICWA notice regarding information that "may have been reasonably available to CFS."

We agree with the parties that the record indicates a failure to fulfill the duty of inquiry required by the ICWA and California law, and that the ICWA notice fails to provide sufficient identifying information regarding R.C.'s ancestors. Accordingly, we will conditionally reverse the orders made at the section 366.62 hearing.

IV. DISPOSITION

The orders terminating parental rights to and placing R.C. for adoption are conditionally reversed and a limited remand is ordered as follows. Upon remand, the court shall direct CFS to make further inquiries regarding R.C.'s Indian ancestry pursuant to section 224.1 and send ICWA notices to all relevant tribes in accordance with the ICWA and California law. CFS shall thereafter file certified mail, return receipts, for the ICWA notices, together with any responses received. If no responses are received, CFS shall so inform the court. The court shall determine whether the ICWA notices and the duty of inquiry requirements have been satisfied and whether R.C. is an Indian child. If the court finds R.C. is not an Indian child, it shall reinstate the orders terminating parental rights and placing R.C. for adoption. If the court finds R.C.

is an Indian child, it shall conduct all further proceedings in compliance with the ICWA and related California law.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

RAMIREZ
P. J.

RICHLI
J.