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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

E058133

(Super.Ct.No. RIJ1201206)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,
Temporary Judge. (Pursuant to Cal. Constr., art. VI, §21.) Reversed and remanded with
directions.

Konrad S. Lee, 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.

Defendant and appellant M.C. (Father) appeals from the juvenile court's findings and orders entered at a combined jurisdictional and dispositional hearing as to his eight- and five-year-old sons, J.C. and D.C., respectively. (Welf. & Inst.Code, §§ 300, subd. (b), 361.5, subd. (b), 395.)¹ Father's sole contention on appeal is that the juvenile court failed to ensure adequate notice compliance with the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (ICWA) and related California law (§§ 224.2, 224.3).² Because the Riverside County Department of Public Social Services (DPSS) had access to the paternal relatives and the ICWA notice did not include all relevant information concerning the paternal relatives, we will conditionally reverse the dispositional order and remand the matter for further proceedings described below.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of DPSS in October 2012 due to the parents' history of domestic violence and substance abuse. The family also had a history with child protective services in both Los Angeles (L.A.) and Riverside Counties. The paternal grandparents and the maternal grandmother suspected that the parents were

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

² C.M. (Mother) is not a party to this appeal.

abusing methamphetamine. The paternal grandparents had kicked the parents out of their home due to the parents' suspected drug abuse, but wanted the children to stay with them.

On November 28, 2012, DPSS filed an amended petition on behalf of the children pursuant to section 300, subdivision (b) (failure to protect), based on, among others, the parents' acts of domestic violence, substance abuse, history with child protective services, and failure to provide proper medical care to J.C.³ The Indian Child Inquiry Attachment to the amended petition noted that an Indian inquiry had been made and the children had no known Indian ancestry.⁴

The detention hearing was held on November 29, 2012. Neither parent was present in court; however, the paternal grandparents were present. The juvenile court formally detained the children and authorized DPSS to place the children in their paternal grandparents' home. The juvenile court ordered the parents to complete the Parental Notification of Indian Status form (Judicial Council Forms, form ICWA-020, hereinafter ICWA-20 form), and found the children were not Indian children and that ICWA did not apply. However, on that date, the paternal grandfather had advised the parents' attorney that there may be Native American ancestry.

³ J.C. was born with a heart condition that required proper medical care and attention.

⁴ On November 7, 2012, the parents had denied Native American ancestry and/or tribal affiliation.

On November 29, 2012, Father filed the ICWA-020 form, stating that he was or may be a member of or eligible for membership in a federally recognized Indian tribe and listed the tribe as “Crow.”

At a hearing on January 2, 2013, Father’s attorney reported that Father had said he was possibly from the Crow Indian Tribe of Montana. On that same date, Father filed another ICWA-020 form indicating the same.

On December 10, 2012, and January 9, 2013, DPSS mailed Notices of Child Custody Proceeding for Indian Child/Form ICWA-030 (Judicial Council Forms, form ICWA-030, hereinafter ICWA Notices) to the children’s parents, the Bureau of Indian Affairs (BIA), the U.S. Department of the Interior, and the Crow Tribe of Montana. The ICWA Notices included information regarding the children, the children’s Mother and Father, the maternal grandmother, the paternal grandmother, and the paternal grandfather. The ICWA Notices, however, did not include any information pertaining to the paternal great grandparents.

The Crow Tribe of Montana responded with two letters dated December 20, 2012, and January 18, 2013. In the letter dated December 20, 2012, the tribe stated in pertinent part, “This office received your request for the Tribal enrollment status of [D.C.] & [J.C.]. Base[d] on the children’s family information that your agency has provided, this agency has determined that the children are not enrolled or enrollable with the Crow Tribe. [¶] At present, the Crow Tribe will not intervene in this matter because the children are not enrolled.” In the letter dated January 18, 2013, the tribe stated in

relevant part, “The enrollment check on [D.C.] & [J.C.] was done on 12/19/2012. They are not enrolled, with the Crow Tribe.”

In a jurisdictional/dispositional report filed on January 25, 2013, the social worker reported that ICWA Notices were sent to the Crow Indian Tribe and that the children may be Indian children. The social worker also noted that on September 30, 2005, the maternal and the paternal grandmother were interviewed regarding Native American heritage by the L.A. County children services. At that time, the maternal grandmother had denied Native American heritage in her family. The paternal great-grandmother recalled that her grandfather (the children’s great-great-great grandfather) may have been from the Crow Indian Tribe. The paternal great-grandmother stated that she was not registered in a tribe and that no one in her family had lived on a reservation since her grandfather. The paternal great-grandmother had provided the L.A. County social worker “with as much information as she had.” On January 5, 2006, the L.A. County Juvenile Court found that ICWA did not apply in J.C.’s case.

At a pretrial hearing held on January 30, 2013, the Riverside County Juvenile Court found “good notice pursuant to ICWA.”

A jurisdictional/dispositional hearing was held on February 21, 2013. At that time, the allegations in the amended petition were found true and the children were declared dependents of the court. The court also found that *ICWA may apply*; that DPSS had provided ICWA notices to the identified tribes and the BIA as required by law; and

that proof of the notices had been filed with the court. The parents were provided with reunification services and ordered to participate in their court-approved case plans.

On February 21, 2013, Father filed a notice of appeal.

II

DISCUSSION

Father argues that DPSS failed to provide adequate ICWA Notices to the Crow Tribe because the notices failed to include any information pertaining to the children's paternal great-grandparents, despite the access to and availability of paternal relatives. DPSS concedes the error, but argues it was harmless.

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 U.S.C.A. 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.” (*Id.* at p. 470.)

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); see also 25 C.F.R. § 23.11.)

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).) “Notice is meaningless if no information or insufficient information is presented to the tribe.” (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116, fn. omitted.) “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, 403-404.)

Here, it is undisputed that DPSS knew Father may have Indian ancestry with the Crow Tribe of Montana, and that DPSS had access to the paternal grandparents. Indeed, the paternal grandparents were actively involved in the dependency proceedings, seeking relative placement of the children, and were in constant contact with the social worker.

On December 10, 2012, and January 9, 2013, DPSS mailed ICWA Notices to the BIA, the U.S. Department of the Interior, and the Crow Tribe of Montana for each of the two children. The ICWA Notices contained information concerning the parents, the maternal grandmother, the paternal grandmother and grandfather, but failed to include any information as to the paternal great-grandparents as required by state and federal statutory requirements. The boxes for inserting the paternal great-grandmother's and paternal great-grandfather's names, current and former addresses, birth dates and places, tribes, and tribal membership or enrollment number were marked “no information available.”

But, as the record reveals, relevant information concerning the paternal great-grandparents was either known or available to DPSS when the notices were sent. Thus, there is insufficient evidence that the omitted information was, in fact, unavailable. Indeed, it seems reasonably likely that the paternal grandparents, with whom the social worker was in contact, would have been able to provide at least some of the information about their own parents.

DPSS, however, argues that any deficiency in the ICWA Notices was harmless because “it appears the minors are not Indian children” and Father has failed to show the children would have been found to be Indian children if proper notice had been provided. In support of its position, DPSS relies on the Crow Tribe’s response letters that indicated the children were not enrolled with the Crow Tribe.

Alleged errors or omissions in ICWA notices generally are subject to harmless error review. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576; *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1414; *Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784.) However, deficient notice under ICWA is usually prejudicial. (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1411.)

In the present matter, the omitted information pertained directly to the paternal relatives who were alleged to be of Indian ancestry. It is the social worker’s “duty to inquire about and obtain, if possible, all of the information about a child’s family history” necessary for the ICWA notice. (*In re S.M., supra*, 118 Cal.App.4th at p. 1116.) The social worker was in contact with the paternal relatives and could have obtained all the necessary information about the children’s family history. The Crow Tribe responded the children were not enrolled in the tribe “[b]ase[d] on the children’s family information that *your agency has provided.*” Because the “purpose of the ICWA notice provisions is to enable the tribe or the BIA to investigate and determine whether the child is in fact an Indian child,” the notice must contain sufficient “information to permit the tribe to conduct a meaningful review of its records to determine” tribal membership. (*In re*

Cheyenne F., supra, 164 Cal.App.4th at p. 576.) Here, the ICWA Notices failed to include any information pertaining to the paternal great-grandparents and were therefore insufficient for the tribe to conduct a meaningful review. The inclusion of information concerning biological great-grandparents is a federal and state requirement. (See § 224.2, subd. (a)(5)(C); 25 C.F.R. § 23.11.) As such, under the circumstances of this case, we are unable to conclude the error was harmless.

The dispositional order must therefore be conditionally reversed and the matter remanded to the juvenile court with directions to order DPSS to comply with the inquiry and notice provisions of the ICWA and related California law. (§§ 224.2, 224.3.)

III

DISPOSITION

The dispositional order is conditionally reversed and a limited remand is ordered as follows. Upon remand, the juvenile court shall direct DPSS to make further inquiries regarding the children's Indian ancestry pursuant to section 224.3 and send ICWA Notices to all relevant tribes in accordance with the ICWA and California law. DPSS shall thereafter file return receipts for certified mail for the ICWA Notices, together with any responses received. If no responses are received, DPSS shall so inform the court. The court shall determine whether the ICWA Notices and the duty of inquiry requirements have been satisfied and whether the children are Indian children. If the court finds the children are not Indian children, it shall reinstate the dispositional order.

If the court finds the children are Indian children, it shall conduct all further proceedings in compliance with the ICWA and related California law.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

MILLER
J.