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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.R. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.A. et al.,

Defendants and Appellants.

E058433

(Super.Ct.Nos. J238473 &
J238474)

OPINION

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

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant B.A.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and
Appellant M.M.

Jean-Rene Basle, County Counsel, Adam Ebright, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

The juvenile court terminated parental rights of B.A. (Mother) and M.M. (Father1) to their son, M.R. (Welf. & Inst. Code, § 366.26, subd. (b)(1).)¹ The court also terminated the parental rights of Mother to her daughter, P.R., along with the rights of P.R.'s deceased father, D.R. (Father2). (§ 366.26, subd. (b)(1).) Mother and Father1 assert the juvenile court erred in finding the Indian Child Welfare Act (ICWA) is inapplicable in this case because San Bernardino County Children and Family Services (the Department) provided incomplete ICWA notices to the tribes and a government agency. The Department concedes Mother and Father1 are correct. We conditionally reverse the judgment with directions.

FACTUAL AND PROCEDURAL HISTORY

The Department filed a petition on behalf of M.R. and P.R. (collectively “the children”) in April 2011 when M.R. was five months old and P.R. was two years old. Mother completed the Parental Notification of Indian Status form (ICWA-020). On the form Mother wrote she may have Cherokee Indian ancestry. Father2 informed the Department that his mother “was a registered member of the Turtle Mountain Band of

¹ All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

Chippewa as a child.”² The Department’s detention report reflects the children may be affiliated with the Turtle Mountain Band of Chippewa Indians.

The Department sent notification of the dependency proceedings (ICWA-030) to the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee, the Cherokee Nation, the Turtle Mountain Band of Chippewa, and the Bureau of Indian Affairs (BIA). The notification listed M.R. as the child at issue in the case. A notification about P.R. was not included in the record; however, both children were listed in the Department’s ICWA declaration of due diligence, and both children were listed in the responses from the tribes, suggesting notifications were sent for both children. Nevertheless, the record only contains the notification concerning M.R.

The notification provided an incorrect date of birth for M.R. The notification reflected the children’s maternal grandmother’s name, but no other information, such as a date of birth or address. The notification included an incorrect spelling of maternal great-grandmother’s first name and failed to include great-grandmother’s date of birth and place of birth, despite the fact that great-grandmother was granted visitation with the children, and therefore was presumably in contact with the Department.

The Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee, the Cherokee Nation, and the Turtle Mountain Band of Chippewa sent responses to the Department reflecting the children were not members of their tribes

² Father² died in November 2012.

based upon the information sent by the Department. On August 22, 2011, at a non-appearance review hearing, the juvenile court found ICWA did not apply in this case.

DISCUSSION

Mother and Father1 contend the trial court erred by finding ICWA was inapplicable to this case because the notices sent to the tribes and BIA were deficient. The Department supports the argument of Mother and Father1.

The notice to the tribes shall include, if known, the child's name, birth date, and birth place. The notice shall also include, if known, the names, maiden names, current addresses, former addresses, birth dates, birth places, and places of death of the child's mother, father, maternal and paternal grandparents, and maternal and paternal great-grandparents. (25 C.F.R. § 23.11(d).)

Given (1) the record does not include a notice pertaining to P.R.; (2) M.R.'s incorrect birth date was provided in the notice; (3) incomplete information was provided about the children's grandmother; and (4) incorrect and incomplete information was provided about the children's great-grandmother, we conclude the juvenile court erred in its ICWA findings, because the notice given to the tribes and BIA was inadequate in light of pertinent laws, such as the federal law set forth *ante*. As a result, we will conditionally reverse the judgment with directions related to the ICWA findings.

DISPOSITION

The order terminating parental rights is conditionally reversed. We order a limited remand as follows: The juvenile court is directed to order the Department to give notice in compliance with the ICWA and related federal and state laws. Once the

juvenile court finds 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. If the juvenile court finds the children are not Indian children, it shall reinstate the original order terminating parental rights. If the juvenile court finds the children are Indian children, it shall proceed in compliance with the ICWA and all related federal and state laws. (*In re S.E.* (2013) 217 Cal.App.4th 610, 616-617 [conditional reversal in an ICWA case].)

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RICHLI
J.