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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.M., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.M. et al.,

Defendants and Appellants.

E060804

(Super.Ct.No. RIJ1100622)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Sharon S. Rollo, under appointment by the Court of Appeal, for Defendant and
Appellant S.M.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant K.M.

Gregory P. Priamos, County Counsel, Anna M. Marchand, Deputy County Counsel, for Plaintiff and Respondent.

S.M. (mother) and K.M. (father) appeal an order terminating juvenile dependency proceedings concerning their son, Ki., following establishment of a legal guardianship. The only issue the parents raise is lack of compliance by the court and the Riverside County Department of Public Social Services (DPSS) with the notice and inquiry requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), or ICWA. We will affirm the juvenile court's ruling that ICWA does not apply.

PROCEDURAL AND FACTUAL HISTORY

The lengthy history of this case has been summarized in four prior appeals.¹ For purposes of this appeal, a brief summary suffices.

Ki. and his younger brother, Ke., were adjudged juvenile court dependents in Riverside County under a petition pursuant to Welfare and Institutions Code section 300,² which alleged that both children had suffered serious physical abuse by their parents. A third sibling was born to the parents after dependency proceedings were initiated as to Ki. and Ke. That child was removed from the parents' custody at birth and was later adopted. (See generally *In re K.M.* (Oct. 22, 2014, E059994) [nonpub. opn].)

¹ On our own motion, we have taken judicial notice of the records in case Nos. E056706, E057540, E058604 and E059994.

² All further statutory citations refer to the Welfare and Institutions Code.

On July 10, 2013, the court selected legal guardianship as Ki.'s permanent plan. (*In re K.M., supra*, E059994.) Ki. was so severely traumatized by the abuse that his therapist recommended that he have no contact with his parents or other family members. The court suspended all visitation until Ki.'s therapist recommended that visitation resume. (*Ibid.*) Ki. and his guardian continued to participate in family therapy with the goal of effecting Ki.'s transition into an intact, healthy family unit and fostering a strong trust and secure bond between Ki. and his guardians.

A hearing was set for December 16, 2013, on the social worker's recommendation that the dependency be terminated. On November 7, 2013, father filed a parental notification of Indian status form, stating that he might have Indian ancestry, either Cherokee or Chickasaw, and asserting that Ki.'s paternal great-grandmother, Carrie Bradshaw, was a member of a federally recognized tribe. DPSS provided notice of the dependency action to three federally recognized Cherokee tribes and to the Chickasaw Nation, containing family information which we will discuss below. Each of the tribes ultimately responded that based upon the information provided, Ki. was not an Indian child with respect to it.

At the hearing held on December 16, 2013, the court found good ICWA notice and found that ICWA does not apply as to the United Keetoowah Band of Cherokee Indians. Responses had not yet been received from the other tribes, so the court continued the hearing until January 28, 2014.

At the hearing held on January 28, 2014, the court found that responses had been received from the Chickasaw Nation, the Cherokee Nation and the Eastern Band of Cherokee Indians. Based on those responses, the court found that ICWA does not apply. Father's attorney told the court that father had new information that he was going to submit to the tribes. The court acknowledged this statement, and stated that if father did have new information, the issue could be revisited. The hearing was continued to February 26, 2014.

On February 26, 2014, father was not present. The court terminated the dependency. It found that visitation between Ki. and his parents was still detrimental to him. The court ordered the therapist to provide a report to the parents and the guardians every two months so that the parents could "hopefully" reestablish visitation at some future point. The court reiterated that ICWA does not apply, but stated that the issue could be revisited if further information was developed. Father's attorney did not make any statement concerning the information he had referred to at the previous hearing or request any further ICWA inquiry.

The parents filed timely notices of appeal.

LEGAL ANALYSIS

SUBSTANTIAL EVIDENCE SUPPORTS THE JUVENILE COURT'S

ICWA FINDINGS

The Chickasaw Nation responded to the ICWA notice with a letter stating that based on the information provided, "it is the position of the Chickasaw Nation that the child(ren) named above is not an 'Indian Child(ren)' as defined by the ICWA." The

letter stated that tribal law “specifies enrollment criteria to be by documented lineage” and that the tribe “cannot accurately verify tribal membership or eligibility without specific documents (i.e., birth dates of all individuals, maiden names, dates of death, etc).” A memorandum enclosed with the letter stated: “We did not locate a CDIB file for the above named family.^[3] Before we can determine that they are of Chickasaw descent, they will need to submit names of lineal ancestors to an individual that appears on the Dawes Commission Rolls (enrollment period was between the years 1898 to 1906). [¶] Please have them fill out the application for CDIB and submit it with birth and death certificates on each individual.”

Both the court and a social services agency have “an affirmative and continuing duty to inquire” whether a child in dependency proceedings is an Indian child. (§ 224.3, subd. (a).) Circumstances which trigger a duty to make further inquiry include receipt of information from an Indian organization which suggests that the child is an Indian child. (Cal. Rules of Court, rule 5.481(a)(5)(A).) The parents assert that the memorandum is a request for further information and that it therefore suggests that Ki. is an Indian child.⁴ We disagree. Although the memorandum is phrased as a request (“Please have [the family] fill out the application for CDIB and submit it with birth and death certificates on

³ Respondent states that “CDIB” is an acronym for “Certificate of Degree of Indian Blood.”

⁴ Most of father’s argument is generic, concerning ICWA notice and inquiry requirements, and does not address the specific reason that he contends further inquiry was required in this case. He does state twice that the letter from the Chickasaw tribe triggered the duty to inquire further. He also joins in mother’s briefing.

each individual”), the memorandum does not imply that the tribe believed that Ki. might be an Indian child. Rather—and particularly when read in conjunction with the accompanying letter—it merely conveys the same message which is implicit in the responses from the Cherokee tribes: That based on the information provided, the tribe cannot determine whether Ki. is an Indian child and, accordingly, they conclude that he is not. If, however, further information comes to light, the tribe will consider that information to determine the child’s status. The only difference is that the Chickasaw letter and memorandum state explicitly that only very specific information, supported by specified documentation, will suffice to establish that Ki. is an Indian child. It certainly does not imply that the tribe believes that such information exists or is obtainable.

We review the juvenile court’s finding that ICWA notice and inquiry requirements were satisfied under the substantial evidence rule. (*In re J. T.* (2007) 154 Cal.App.4th 986, 991.)⁵ Substantial evidence is evidence which a reasonable trier of fact could find to be proof of a contested factual issue. (See generally *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651-652.) A reviewing court must indulge all reasonable inferences that may be derived from the evidence which supports the contested ruling. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.)

⁵ Father mentions the substantial evidence standard of review on page 24 of his brief, but does not analyze the issue with regard to that standard. Mother cites *In re J.T.*, *supra*, 154 Cal.App.4th 986, but does not mention the standard of review.

Here, the record supports the inference that DPSS did adequately discharge its duties of notice and inquiry. First, although mother suggests that further inquiry to the tribe itself was warranted, she does not explain how further inquiry to the tribe could possibly have revealed the name of any enrolled ancestor of Ki. or how it could possibly have resulted in production of the birth and death certificates of every lineal descent of that ancestor linking him or her to Ki. Second, the record supports the inference that further inquiry by DPSS was not necessary. After the Chickasaw letter and memorandum had been received, father's attorney represented to the court that father had obtained further information and that father would submit it to the tribes. If father had the genealogical documentation the tribe required, no further inquiry by DPSS was necessary, because father represented that he would provide it to the tribe. Conversely, if father did not have the documentation, no further inquiry by DPSS was likely to produce it.⁶ Few families would be likely to have such documentation, and the court could rationally infer that if father's family did have it, father would have produced it.

Moreover, the record makes it quite clear that father's family did not have that documentation. Although neither parent mentions this, the record shows that two prior ICWA inquiries had been made. The record contains virtually no information concerning the first ICWA notice, which apparently occurred during the original dependency in Los

⁶ It would have been prudent for the court to direct father to share his information with DPSS or to put his information on the record so that the court could determine whether DPSS should engage in further inquiry. Doing so might have obviated the present appeal.

Angeles County.⁷ The information provided in the second of those notices, however, varied greatly from the information provided in the notice which is the subject of this appeal. The second ICWA notice was sent to the Bureau of Indian Affairs (BIA) on April 12, 2012. That notice indicated that father believed he had Indian ancestry through his father P.M. III, his grandfather P.M. Jr. and his great-grandfather P.M. Sr., and also through his grandmother Sedalia (or Sadelia) Louise Bankett. The notice did not specify any tribal affiliation of any of those ancestors. Further, although dates and places of birth were included for some ancestors (but not for others), the notice contained no information concerning the dates or places of their deaths.⁸

In contrast, the latest notice omits any information concerning father's grandfather or great-grandfather. It again identifies father's grandmother Bankett as possibly affiliated with an unknown tribe, and for the first time indicates that father's other grandmother, Carrie Bradshaw, was affiliated with one of the three Cherokee tribes or with the Chickasaw tribe. The notice also identifies father's mother as possibly being affiliated with one of the Cherokee tribes or the Chickasaw Nation. The notice stated that

⁷ The original dependency action concerning Ki. in Los Angeles County was filed on October 27, 2009. According to the detention report filed in the Riverside dependency proceeding, the Los Angeles court found on October 27, 2009 that ICWA does not apply. No documents from the Los Angeles County proceedings concerning the ICWA inquiry are contained in the records of any of the four prior cases of which we have taken judicial notice. (See fn. 1, *ante*.)

⁸ The BIA responded on April 23, 2012, that the information provided was insufficient to determine tribal affiliation. On May 8, 2012, the juvenile court found "good ICWA notice" and that ICWA does not apply.

she was deceased and provided no information concerning her date or place of birth or death.

The differences between these two ICWA notices support the inference that father's family had no clear information concerning its Indian heritage and that it did not have birth and death certificates for the possible Indian ancestors. If the family had the name of an ancestor who appeared on the Chickasaw tribal roll between 1898 and 1906, father would have known that his ancestry was Chickasaw, not maybe Chickasaw or maybe Cherokee. And, if father had the birth and death certificates for each lineal descent linking Ki. to that ancestor, he would have been able to provide dates and places of birth and death of the various ancestors he identified. This evidence also supports the conclusion that no further inquiry by DPSS was likely to produce the information and documentation required by the Chickasaw Nation and, accordingly, that DPSS had fulfilled its inquiry obligations under ICWA.

We reject any implication in the parents' briefing that DPSS should have conducted an investigation into Ki.'s ancestry. Although a social services agency has a duty to investigate when it has reason to know that a child may be an Indian child, it has no duty to undertake a "comprehensive investigation" into a child's Indian status. (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39.) Obtaining the documentation required by the Chickasaw Nation would have required an extensive genealogical investigation far beyond the scope of what is required of a social services agency or a court.

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

KING
J.