

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 W.T., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.C. et al.,

Defendants and Appellants.

E061672

(Super.Ct.No. J252572)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant
and Appellant A.C.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and
Appellant W.T.

Jean-Rene Basle, County Counsel, Dawn Messer, Deputy County Counsel, for Plaintiff and Respondent.

A.C. (mother) appeals from orders of the juvenile court denying her modification petition and terminating her parental rights as to W.T. Mother contends she demonstrated changed circumstances, and that granting her reunification services was in the child's best interests. Mother also argues that the juvenile court erred by (1) terminating her parental rights, and (2) not finding under Welfare and Institutions Code¹ section 366.26, subdivision (c)(1)(B)(i), that a continuation of her parental relationship would be beneficial to the child. W.L. (father) appeals from the order terminating his parental rights to the child, contending the juvenile court erred by not making an express finding that the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA) did not apply in this case. We find no error and, therefore, affirm the orders.

I.

FACTS AND PROCEDURAL HISTORY

On December 20, 2013, mother took W.L. to San Bernardino Community Hospital with burn-like marks and blisters on his face, neck, ear, and chest. W.L. was later transferred to Arrowhead Regional Medical Center.² Responding to a report of possible

¹ Unless otherwise indicated, all additional statutory references are to the Welfare and Institutions Code.

² By order dated September 15, 2014, this court, on its own motion, incorporated the record from mother's prior writ proceeding in case No. E060826. (Cal. Rules of Court, rule 8.147.)

child abuse and general neglect, social workers from San Bernardino County Children and Family Services (CFS) spoke to the treating physicians at the hospital. Two emergency room physicians told the social workers that W.L.'s marks and blisters were consistent with burns from a thermal injury, rather than an allergic reaction. A third physician told one of the social workers that W.L.'s symptoms were consistent with a severe allergic reaction from antibiotics prescribed to him 10 days earlier.

Mother told one of the social workers that she left her home at approximately 4:00 p.m. on December 20, 2013, to go to the store, and she left W.L. with her boyfriend. The boyfriend told the social worker that he changed W.L.'s diaper and placed him in his playpen, where he fell asleep. The boyfriend then stepped outside, but came back in periodically to check on W.L. When mother returned at approximately 4:45 p.m., she heard W.L. crying and went to pick him up. She saw what appeared to be dried milk on W.L.'s face, but when she turned him toward a light she noticed lesions on his face and chest. Mother told the social worker that W.L. had been sick with a throat infection about two weeks earlier, and that he had been prescribed antibiotics. She also told the social worker that she previously had three other children removed from her care and, although she had a history of substance abuse, she had been clean for about three years. The next day, two physicians who were treating W.L. in the hospital's pediatric unit told the social workers that W.L.'s injuries were likely the result of thermal burns, and that they were not likely the result of an allergic reaction. The attending physician in the burn unit told the social workers that he was not yet sure of the cause of W.L.'s injuries, but that W.L. would be moved to the burn unit that day for further monitoring.

On December 22, 2013, the director of the burn unit called one of the social workers to report that, based on his physical inspection of W.L., he was 100 percent certain that the child's injuries were the result of thermal burns. The child was then detained, and mother was served with a detention warrant. Mother denied that she burned W.L., and told the social workers that she had no idea how he was injured. Mother also informed the social workers that she believed she had Indian heritage.

On December 24, 2013, CFS filed a petition alleging that W.L. was a dependent child pursuant to section 300, subdivisions (a), (b), (e), (g), (i), and (j), based on serious physical abuse and harm, cruelty, neglect, abuse of a sibling, and failure to protect and provide appropriate support. The petition alleged that mother's history of substance abuse and criminal activity rendered her unable to properly care for W.L., and that father was incarcerated in state prison at the time of the abuse, which rendered him incapable of caring for and providing support for W.L. The petition indicated W.L.'s possible Indian ancestry on his mother's side. In a detention report dated December 26, 2013, CFS recommended the juvenile court order W.L. to be detained and placed in the custody of CFS, and that mother be given weekly visitation but no reunification services.

The juvenile court found a prima facie case for detention in the custody of CFS, ordered that W.L. be detained and remain in the custody of CFS and placed in foster care upon his discharge from the hospital, denied mother reunification services, directed that mother be given weekly visitation for two hours, and ordered that W.L.'s paternal grandmother be assessed for relative placement. The juvenile court also directed mother to submit to an interview regarding possible Indian heritage based on her indication that

she might have such ancestry. Finally, the court indicated that mother needed to take parenting courses and ordered that she be referred to therapy services to address past domestic abuse from father and the abuse that resulted in W.L.'s injuries. In an ICWA form completed the same day as the detention hearing, mother wrote that she believed she had Cherokee or Choctaw ancestry.

In a jurisdiction and disposition report filed on January 27, 2014, a social worker reported that W.L. had been discharged from the hospital on December 27, 2013, and placed in the care of a foster family. The social worker reported that mother had attended all scheduled visits with W.L. and the visits were appropriate, and that W.L. appeared to be bonded with mother. During an interview with the social worker, mother stated she had no idea how W.L. was injured, and that she was not sure whether his injuries were in fact caused by thermal burns as opposed to an allergic reaction to antibiotics or even possibly caused by a reaction to Lysol she sometimes sprayed on W.L.'s bedding. Mother also discounted the possibility that her boyfriend was responsible for W.L.'s injuries. Although on January 10, 2014, mother admitted to past substance abuse and criminal activity, she denied that it had anything to do with W.L.'s injuries and stated that she had not used any illegal drugs for three years. However, a drug test taken on January 16, 2014, showed the presence of amphetamines in mother's blood stream.

Based on the evidence of abuse and neglect of W.L., and based on mother's prior history with CFS, which resulted in the removal and/or adoption of mother's other three children, the social worker recommended that the juvenile court sustain the petition and set a hearing pursuant to section 366.26 for termination of parental rights and selection of

a permanent placement for W.L. The report also indicated that mother reported possible Cherokee or Choctaw heritage through her maternal grandmother, and that W.L.'s paternal grandmother reported that she was unaware of any Indian heritage in her family.

CFS filed an amended petition on January 29, 2014. In a detention report dated January 30, 2014, the social worker reported that mother continued to make all scheduled visits with W.L., and that the visits were appropriate.

Prior to a contested jurisdiction and disposition hearing, counsel for CFS filed a request that the juvenile court take judicial notice of court records from the dependency proceedings for mother's other three children. Included in these records were the minutes from an October 15, 2009 hearing about W.L.'s half sibling Z.B. in which the juvenile court found that ICWA did not apply. CFS also provided notice under ICWA to the various Cherokee and Choctaw tribes, as well as to the United States Department of the Interior, Bureau of Indian Affairs, about W.L.'s possible Indian heritage. CFS received correspondence from the Cherokee and Choctaw tribes indicating that W.L.'s mother and relatives were not listed as enrolled members of those tribes, and that W.L. was therefore not an Indian child.

At a March 25, 2014 pretrial conference, counsel for mother denied and objected to the allegations in the amended petitions, arguing the allegations of domestic violence from father were old and had no bearing on the current case because father was incarcerated and no longer lived with mother. Counsel acknowledged mother's past substance abuse, but argued she was in a substance abuse program and was sober. Moreover, counsel argued the physicians' reports submitted to the juvenile court merely

supported a suspicion of physical abuse, and did not constitute clear and convincing evidence of severe physical abuse. In response, counsel for CFS argued that the physicians' reports submitted with the various detention and jurisdiction reports demonstrated by clear and convincing evidence that W.L.'s injuries were caused by thermal burns, which resulted from negligence or unreasonable care.

The juvenile court found true the allegations that W.L. suffered serious physical harm, and that mother failed to protect him. The court found that W.L. was a dependent child within the meaning of section 300, subdivisions (a), (b), (e), (i), and (j), ordered that he remain removed from the custody of mother and, based on W.L.'s injuries and mother's "lack of progress so far in classes," ordered that mother not receive reunification services. The court set a hearing for termination of parental rights and for selection of a permanent plan pursuant to section 366.26. Finally, the court found that notice under ICWA had been given, and that ICWA "may apply."

Mother and father filed separate notices of intent to challenge by petition for writ of mandate the order setting a hearing pursuant to section 366.26 (Cal. Rules of Court, rules 8.450, 8.452), but this court dismissed the petitions when appointed counsel filed "Non-Issue Writs."

In a report filed July 14, 2014, for the section 366.26 hearing, the social worker recommended that the juvenile court terminate parental rights and approve an adoption plan for W.L.'s caregivers. The social worker reported that W.L. had been placed with his caregivers since December 26, 2013, that he was a happy toddler who was developing well, and that he was attached to and had a loving relationship with his caregivers. The

social worker reported that mother continued to visit regularly with W.L., and that the visits were shared with W.L.'s paternal grandmother. Mother acted appropriately with W.L., showed him affection, and always brought food or toys for W.L. However, the social worker reported that W.L.'s foster mother expressed concerns about mother's ability to provide for W.L.'s safety because mother told her that she remained committed to her boyfriend, in whose care W.L. had received his injuries.

On July 25, 2014, mother filed a petition pursuant to section 388 requesting that the juvenile court set aside its order denying her reunification services, and enter a new order granting her reunification services and a transition plan for W.L. to be returned to her custody. Mother argued she had demonstrated changed circumstances warranting reunification services because she had completed two parenting courses; she had completed a substance abuse program through Inland Behavioral and Health Services with 100 percent attendance; she had continued to test negative for the presence of illegal substances; she had participated in Alcoholics Anonymous/Narcotics Anonymous meetings with a sponsor; and she had appropriate housing. Mother argued that an order granting her reunification services would be in W.L.'s best interests because she had a strong bond with the child, she visited with him consistently, and she "has made a complete turnaround in [her] lifestyle since [W.L.] was removed from her care." The juvenile court set the petition to be heard the same day as the section 366.26 hearing.

During the hearing on mother's section 388 petition, mother's counsel outlined mother's efforts as stated in the petition, and informed the court that mother was living alone and was no longer in a relationship. Counsel argued that mother had a very strong

bond with W.L. Because W.L. had been out of mother's care for a significant period of time, and because mother did not want to traumatize W.L., counsel requested "visitation and a transition with reunification services." Although counsel for CFS acknowledged that "mother has made strides in rehabilitation," she argued that granting reunification services would not be in W.L.'s best interests because he had been removed from mother's custody when he was merely nine months old, and he therefore had "no significant bond" with mother. The juvenile court concluded that mother's progress in her courses and the evidence in support of her petition "demonstrate that she has turned herself around," and the court noted that, had this case only involved substance abuse and domestic violence, her petition might have been granted. However, because of "the nature of the removal and injuries to the minor," the juvenile court denied the petition because it determined it would not be in the best interests of W.L. to offer mother reunification services.

During the section 366.26 hearing, counsel for father objected to CFS's recommendation, but stated he had no affirmative evidence to offer. Mother testified that she had visited with W.L. once a week "faithfully," during which she played with him and instructed him. W.L. referred to mother as "Mom," and he went straight to mother from his foster parents at the start of visits. Mother testified that W.L. was not upset at the end of each visit with her. When asked if W.L. saw her as a parent, mother testified, "He knows we have a bond," and that she and W.L. were "very close." When asked if the termination of her parental rights would be detrimental to W.L., mother answered, "In a way, yeah," and "[h]e is going to know that Mommy's not going to be there anymore,

and that is going to hurt him.” On cross-examination, mother testified that W.L. loved his foster parents, that they took very good care of him, and that they had already set up a college savings account for him.

Counsel for father asked the juvenile court to consider legal guardianship rather than termination of parental rights and adoption. Mother’s counsel argued that, although W.L. “has a huge bond with the foster parents, . . . he has that bond with [mother] as well.” Mother had “done everything that could be expected” and had visited with him consistently, so her counsel joined in father’s request that the court consider something other than termination of parental rights, such as guardianship or permanent planned placement. Counsel for CFS argued that, although mother loved W.L. very much, “it is obvious that the benefit that this child gets from her [is] incidental when she visits with him.” According to counsel for CFS, mother was “simply a friendly visitor,” whereas mother admitted that W.L. saw his caregivers as parental figures. Therefore, counsel argued the parental benefit exception did not apply, and asked that the court adopt the recommendation of termination of parental rights and adoption. Counsel for W.L. also recommended that the court adopt the recommendation.

After taking the matter under submission, the juvenile court addressed mother’s counsel’s renewed objection to the order denying the section 388 petition. The court noted that “the main problem is that this is a severe physical abuse case,” yet mother had not made an “acknowledgment of that damage” in her section 388 petition or in her testimony. The court stated that “mother’s failure to address the issue of the physical abuse is a concern.” The court specifically addressed mother’s testimony that W.L.’s

injuries were the result of an “accident.” “It was not an accident. Clearly, from [the] injury, it was an intentional physical abuse of a child, very young.” Because mother failed to address the issue of severe physical abuse, the court stated its ruling would stand.

With respect to the recommendation of termination of parental rights and adoption, the juvenile court stated there was no doubt that mother had a bond with W.L. But the court found that the testimony of a parental bond between mother and W.L. did not outweigh the child’s need for permanence. Therefore, the court found by clear and convincing evidence that W.L. was likely to be adopted, and it terminated mother and father’s parental rights. The reporter’s transcript from the hearing and the minutes include no ruling that ICWA did not apply, but the appropriate places on Judicial Council Form JV-320 (boxes 4.b., 10.a.-10.e.) to be marked when it does apply were left unmarked.

Mother and father timely appealed.

II.

DISCUSSION

1. *The Juvenile Court Properly Denied Mother’s Section 388 Petition*

Mother contends the juvenile court abused its discretion by denying her section 388 petition without conducting an evidentiary hearing. Mother states that if the court had conducted such a hearing, she would have been able to submit additional evidence of changed circumstances, and that an order granting her reunification services would be in W.L.’s best interests. We find no abuse of discretion.

“A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] The parent bears the burden to show both a legitimate change of circumstances and that undoing the prior order would be in the best interest of the child. [Citation.] Generally, the petitioner must show by a preponderance of the evidence that the child’s welfare requires the modification sought. [Citation.]” (*In re A.A.* (2012) 203 Cal.App.4th 597, 611-612 [Fourth Dist., Div. Two].)

“Not every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citation.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citation.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order. [Citation.]” (*In re A.A., supra*, 203 Cal.App.4th at p. 612.)

Section 388 is “an ‘escape mechanism’ when parents *complete a reformation* in the short, final period after the termination of reunification services but before the actual termination of parental rights. [Citation.]” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528, italics added.) It is not enough for a parent to show an incomplete reformation or that they are in the process of changing the circumstances which lead to the dependency. “After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this

point ‘the focus shifts to the needs of the child for permanency and stability’

[Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

“A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child’s best interests.

[Citation.] “[C]hildhood does not wait for the parent to become adequate.””

[Citation.]” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 206.)

“It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.]’ [Citation.] The fact that the parent ‘makes relatively last-minute (albeit genuine) changes’ does not automatically tip the scale in the parent’s favor. [Citation.] Instead, ‘a number of factors should be examined.’ [Citation.] First, the juvenile court should consider ‘the seriousness of the reason for the dependency’ [Citation.] ‘A second important factor . . . is the strength of the existing bond between the parent and child’ [Citation.] Finally, as ‘the essence of a section 388 motion is that there has been a change of circumstances,’ the court should consider ‘the nature of the change, the ease by which the change could be brought about, and the reason the change was not made before’ [Citation.] ‘While the bond to the caretaker cannot be dispositive . . . , our Supreme Court made it very clear . . . that the disruption of an existing psychological bond between dependent children and their

caretakers is an extremely important factor bearing on any section 388 motion.’

[Citation.]” (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

“The juvenile court shall order a hearing [on a section 388 petition] where ‘it appears that the best interests of the child . . . may be promoted . . .’ by the new order.

(§ 388, subd. (d).) Thus, the parent must sufficiently allege *both* a change in

circumstances or new evidence *and* the promotion of the child’s best interests. [Citation.]

[¶] A prima facie case is made if the allegations demonstrate that these two elements are

supported by probable cause. [Citations.] It is not made, however, if the allegations

would fail to sustain a favorable decision even if they were found to be true at a hearing.

[Citations.] While the petition must be liberally construed in favor of its sufficiency

[citations], the allegations must nonetheless describe specifically how the petition will

advance the child’s best interests. [Citations.]” (*In re G.B.* (2014) 227 Cal.App.4th

1147, 1157.) “This court reviews a juvenile court’s decision to deny a section 388

petition without a hearing for abuse of discretion. [Citation.]” (*Id.* at p. 1158.)

As an initial matter, although the juvenile court did not conduct a full evidentiary hearing on mother’s petition, the court did not summarily deny the petition and it did permit oral argument during which mother’s counsel stated to the court that, among other things, mother’s circumstances had changed because she was single and no longer in a relationship, from which the court could draw the inference that the boyfriend was no longer in the picture. Moreover, although the court had already denied the petition, it again addressed the merits of the petition after mother testified during the section 366.36

hearing and stated its reasons for denying the petition with specific reference to mother's testimony. So for all intents and purposes, the court did conduct an evidentiary hearing.

Nor would conducting a formal evidentiary hearing on mother's section 388 petition have made any difference here. The only additional evidence that mother points to on appeal that could have been admitted, as opposed to merely being alluded to by counsel, was that the boyfriend was no longer in the picture. But that evidence only addressed the presence of changed circumstances. As counsel for CFS points out in its brief, mother's showing of changed circumstances is "not the issue" here because the juvenile court found that she had established that prong. The sole question before us is whether an order granting mother reunification services would have been in W.L.'s best interests.

With respect to the second prong, the juvenile court correctly noted that the evidence of changed circumstances, while substantial, mostly addressed problems that did not cause W.L.'s injuries. Mother's efforts to maintain her sobriety and to address her history of domestic violence, while commendable, did not show that mother had sufficiently addressed the serious reason for the dependency, to wit, W.L.'s severe physical abuse. (*In re D.R.*, *supra*, 193 Cal.App.4th at p. 1512.) As the juvenile court noted, mother's testimony during the section 366.26 hearing brought this deficit into sharper focus when she expressed her continued belief that, contrary to the evidence and the reasonable inferences to be drawn from it, W.L.'s injuries were the result of an accident.

Therefore, we find no abuse of discretion.

2. *The Juvenile Court Did Not Err by Finding W.L. Would Not Benefit from Mother's Continued Parental Relationship*

“Section 366.26 provides that if parents have failed to reunify with an adoptable child, the juvenile court must terminate their parental rights and select adoption as the permanent plan for the child. The juvenile court may choose a different permanent plan only if it ‘finds a compelling reason for determining that termination [of parental rights] would be detrimental to the child [because]: [¶] (i) The parents have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.’ (§ 366.26, subd. (c)(1)(B)(i).)” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.)

As CFS noted in its brief, the appellate courts are divided on the appropriate standard of review of a juvenile court’s conclusion that the benefit exception does not apply. Some courts have applied the abuse of discretion standard while others have applied the substantial evidence test. (See *In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) Recently, some courts have taken a middle approach, applying the substantial evidence test to the juvenile court’s factual finding of whether there exists a beneficial parent-child relationship, and applying the abuse of discretion standard to the juvenile court’s ““quintessentially” discretionary decision” that termination of parental rights will not be detrimental to the child. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622, quoting *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315.) We need not decide which approach is correct because under either standard the juvenile court did not err.

There is no dispute on appeal that mother had visited regularly with W.T., and that those visits went well. The pertinent issue then becomes whether the second prong of the exception applies, i.e., whether the child would derive a greater benefit from continuing the parent-child relationship than he or she would from being adopted. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.)

In re Autumn H. (1994) 27 Cal.App.4th 567, is the seminal case regarding exceptions to the preference for adoption. There, the court held that parent-child relationships that can prevent termination of parental rights are ones that promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*Id.* at p. 575.)

“The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re Autumn H., supra*, 27 Cal.App.4th at pp. 575-576.)

Adoption cannot be thwarted simply because a child would derive some benefit from continuing the parent-child relationship, and adoption should be ordered when the court finds that the relationship maintained through visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) The juvenile court may reject the parent's claim simply by finding that the relationship maintained during the visitation does not benefit the child significantly enough to outweigh the strong preference for adoption. To apply the exception, the court must find compelling reasons to apply the exception. Only in an extraordinary case will the preservation of parental rights prevail over the Legislature's preference for adoption. (*Ibid.*)

Although there is no dispute that mother genuinely loves W.L. and that there is a bond between them, the evidence did not demonstrate how deeply attached mother was to W.L., and no bonding study was ever conducted. Mother testified that W.L. went directly to her at the start of visits, that she played with and taught W.L., and that he called her "Mom." But mother did not testify that W.L. cried or was upset at the end of the visits, or that he was unhappy to return to his caregivers. To the contrary, she testified that when the visits came to an end W.L. knew it was "clean-up time," and he would return to his caregivers without incident. Moreover, although mother testified that W.L. saw her as a parent, she also testified that he loved his caretakers as well.

Considering W.L.'s tender age, the fact W.L. lived with his caretakers for almost as long as he lived with his mother, and the demonstrated strength of the bond between W.L. and his prospective adoptive parents, the juvenile court did not err by concluding

the bond between mother and W.L. was not so substantial that severing it would be detrimental. The benefits W.L. would derive from a continued parental relationship with mother, whose long-term ability to safely provide for him had not yet been proven, did not outweigh the benefits he would derive from a stable and secure adoptive family. The record supports the trial court's findings, and we find no abuse of discretion.

3. *The Record Contains Substantial Evidence to Support the Juvenile Court's Implied Findings That Proper Notice Was Given Under ICWA and That ICWA Did Not Apply*

Lastly, father contends that the juvenile court erred by not expressly finding that proper notice had been given pursuant to ICWA and that ICWA did not apply, and that we must reverse the judgment and remand for the trial court to make such findings. We disagree.

“Among ICWA’s procedural safeguards is the duty to inquire into a dependent child’s Indian heritage and to provide notice of the proceeding to any tribe or potential tribes, the parent, any Indian custodian of the child and, under some circumstances, to the Bureau of Indian Affairs.’ [Citation.] To comply with these notice requirements, [CFS] was required to (1) identify any possible tribal affiliations and send notice to those tribes; and (2) submit copies of such notices, including return receipts, and any correspondence received from the tribes to the trial court. [Citation.]” (*In re Christian P.* (2012) 208 Cal.App.4th 437, 451.) “The [trial] 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.] [Citation.] “While

the record must reflect that the court considered the issue and decided whether ICWA applies, its finding may be either express or implied.” [Citations.]” (*Ibid.*)

In *In re E.W.* (2009) 170 Cal.App.4th 396 [Fourth Dist., Div. Two], the mother argued that the juvenile court erred prejudicially by not expressly finding that proper notice was given under ICWA, and by not expressly finding that ICWA did not apply. (*Id.* at p. 403.) This court rejected that argument. “We conclude that the juvenile court’s implicit ruling, though less than ideally set forth in the record, sufficed and fell short of error. The record makes plain that the court considered the relevant information, which established that ICWA does not apply to the children. In addition, the relevant tribes replied that [the child] was neither a member nor eligible for membership. Under section 224.3, subdivision (e)(1), ‘[a] determination by an Indian tribe that a child is or is not a member of or eligible for membership in that tribe, or testimony attesting to that status by a person authorized by the tribe to provide that determination, shall be conclusive.’” (*Id.* at p. 404.) We also noted that “the social worker’s reports specifically discussed the ICWA issue and included documentation of the notices sent and the negative responses received from the tribes. Given the several reports . . . specifically discussing the ICWA issue and repeatedly noting that ICWA ‘does not apply,’ the record reflect[ed] an implicit finding concerning the applicability of the ICWA.” (*Ibid.*)

The record in this case also contains substantial evidence to support the juvenile court’s implied findings that proper notice was given and that ICWA did not apply. Based on mother’s statements to the social workers that she might have Cherokee or Choctaw ancestry through her maternal grandmother, CFS served the various Cherokee

and Choctaw Indian tribes, as well as the Bureau of Indian Affairs. Each of the tribes responded that none of W.L.'s family members were enrolled tribal members, so W.L. was not an Indian child. The juvenile court took notice of the issue at various hearings, indicating possible Indian heritage. Had the juvenile court found ICWA to be applicable, it would have so indicated in its written order. Instead, the appropriate boxes on Judicial Council Form JV-320 were left unchecked. Finally, although there is no indication in the record that the juvenile court took judicial notice of the records from the juvenile proceedings involving W.L.'s half siblings, the presence in the juvenile court's record of the order in Z.B.'s case holding that ICWA did not apply is additional evidence to support the trial court's implied findings.

Based on the foregoing, we find no prejudicial error.

III.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.