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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.H.,

Defendant and Appellant.

E061966

(Super.Ct.No. J246453)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lily L. Sinfield,  
Judge. Reversed with directions.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

J.H., the father of J.K., appeals an order terminating his parental rights. He contends that the trial court failed to comply with the notice requirements of the Indian Child Welfare Act, or ICWA. (25 U.S.C. § 1901 et seq.) We agree, and we will conditionally reverse the judgment and direct the court and San Bernardino County Children and Family Services to comply with ICWA.

#### PROCEDURAL AND FACTUAL HISTORY

Because of the limited nature of the issue presented on appeal, we will summarize the proceedings below succinctly. J.K., then approximately one year old, was detained in Los Angeles County, based on a petition pursuant to Welfare and Institutions Code section 300, which alleged that his mother placed him at risk of harm by maintaining an unsanitary household and by smoking marijuana while caring for him. J.H. was not residing with them at the time, and his whereabouts were unknown, but mother acknowledged that he was J.K.'s father. J.H. appeared at the detention hearing and sought to have J.K. released to his custody. The court found that J.H. was the child's presumed father. The parents entered into a mediated agreement that mother would submit on an amended petition alleging only the marijuana use, that J.H. would submit to court jurisdiction, and that J.K. would be placed in J.H.'s custody. Mother was given reunification services, and J.H. agreed to complete a parenting program. The court made

orders consistent with that agreement, and J.K. was released to his father's custody. Because J.H. resided in Fontana, the case was transferred to San Bernardino County.

Later, a supplemental petition was filed alleging that both parents had failed to complete their case plans and that J.H. had been found in possession of a controlled substance. J.K. was removed from his father's custody and placed in the custody of paternal relatives, with whom J.K. and J.H. had been residing. J.H. was arrested again for possession of controlled substances and other offenses. Reunification services were terminated. Parental rights were ultimately terminated, and J.K. was placed for adoption with his relative caregivers.

Father filed a timely notice of appeal.

### LEGAL ANALYSIS

#### CONDITIONAL REVERSAL FOR ICWA COMPLIANCE IS REQUIRED

As noted above, J.K. asserts that lack of compliance with ICWA noticing requirements mandates reversal.<sup>1</sup> We agree.

ICWA was enacted “to respond to a crisis in which large numbers of Indian children were being removed from their families for placement in non-Indian homes.

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<sup>1</sup> The termination of parental rights may be challenged on the ground of lack of ICWA notice by the dependent child, a parent or Indian custodian from whose custody the child was removed, and the Indian child's tribe. (25 U.S.C. § 1914; Cal. Rules of Court, rule 5.486(a).) A non-Indian parent has standing to assert ICWA error on appeal. (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339 [Fourth Dist., Div. Two].) Failure to challenge ICWA notice compliance in the trial court does not forfeit appellate review. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991.)

[Citation.] ICWA was designed to protect the best interests of Indian children and promote the stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families by state courts and the placement of such children in foster or adoptive homes. [Citation.] [¶] At the heart of ICWA are its jurisdictional provisions over child custody proceedings involving Indian children domiciled both on and off the reservation. [Citation.]” (*In re Christian P.* (2012) 208 Cal.App.4th 437, 450-451, fn. omitted.)

“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, [the social services agency is] 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.” (*In re Christian P.*, *supra*, 208 Cal.App.4th at p. 451.) If the juvenile court has determined whether proper notice was given under ICWA and whether ICWA applies to the proceedings, we review that court’s findings for substantial evidence. (*Ibid.*) Here, however, our review of the record reveals that neither the juvenile court in Los Angeles nor the juvenile court in San Bernardino made a finding whether proper notice was given or whether ICWA applies. Accordingly, we determine whether the notice was sufficient as a matter of law.

Mother informed the court in Los Angeles and the Los Angeles County Department of Children and Family Services that she had Cherokee ancestry through her paternal ancestors, but did not specify a band or tribe. She told the court that she had her grandmother's death certificate, which referenced the Cherokee Nation.<sup>2</sup> She gave her grandmother's name as Zonia Parson. The court ordered the department to follow "standard protocol."

ICWA notices were mailed to the United Keetoowah Band of Cherokee Indians of Oklahoma and the Cherokee Nation of Oklahoma. However, there are three federally recognized Cherokee tribes—the United Keetoowah Band of Cherokee Indians of Oklahoma, the Cherokee Nation of Oklahoma, and the Eastern Band of Cherokee Indians.<sup>3</sup> State law mandates notice to "all tribes of which the child may be a member or eligible for membership." (Welf. & Inst. Code, § 224.2, subd. (a)(3).) The department's failure to provide notice to the Eastern Band of Cherokee Indians requires reversal. (*In re J.T.*, *supra*, 154 Cal.App.4th at pp. 992-994.)

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<sup>2</sup> Mother stated that "both" death certificates reference the Cherokee nation. It is not clear what she meant. However, because mother told the social worker that her grandfather was Cherokee, it is possible that she was referring to her grandfather's death certificate as well as her grandmother's, indicating Cherokee ancestry through both grandparents.

<sup>3</sup> See United States Department of Interior list of Cherokee ancestry categories. (<<http://www.doi.gov/tribes/cherokee.cfm>> [as of Feb. 11, 2015].)

At the detention hearing in San Bernardino County on the supplemental petition, the court inquired if J.H had any Indian ancestry. J.H. was not present, but his aunt informed the court that he did not have any Indian ancestry. The court then asked her if the mother had any Indian ancestry. The paternal aunt did not know. Mother was not present. The court ordered the parents to complete “the ICWA 20 regarding Indian heritage.” However, there is no indication in the record that San Bernardino County Children and Family Services made any further inquiry as to J.K.’s possible Indian heritage, and the record does not contain any ICWA notice sent by that department. Accordingly, the deficient notice sent by the Los Angeles County Department of Children and Family Services was not cured by San Bernardino County.

In addition to providing notice to all three Cherokee tribes, on remand the following issues must be addressed:

J.H. asserts that the notice was deficient because it gives the name of mother’s father as “Matthew [K.],” in contrast to a proof of service which states that a particular notice was served on mother by leaving it with her father, “Dan [E.]” ICWA notices must contain enough identifying information to be meaningful, and a social worker has a duty to inquire about and obtain, if possible, all pertinent information about the child’s Indian family, or alleged Indian family, history. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) Accordingly, this discrepancy must be resolved.

We note too that although mother stated that her paternal grandmother's name was "Zonia Parson," the ICWA notice gives the grandmother's name as "Sonia English" and the grandfather's name as "Oscar English." This discrepancy must also be resolved.

Finally, the ICWA notice states that the date and place of death of both grandparents is unknown, and states as to the grandmother that "tribe or band" and "membership or enrollment number" do not apply, thus indicating that the grandmother had no Cherokee ancestry. Mother informed the court, however, that she had the grandmother's death certificate and that it referenced the Cherokee Nation. Here, mother had with her at the detention hearing the death certificate of the grandmother who, she she asserted, had Cherokee ancestry, and possibly either had or had access to the death certificate of the grandfather whom she also believed to have Cherokee ancestry. (See fn. 2, *ante.*) The Los Angeles County social worker should have obtained a copy of the death certificate or certificates and should have provided them to all three federally recognized Cherokee tribes, along with whatever further information mother provided. At the very least, providing the certificates would have ensured that the tribes were provided with the correct names of the putative Cherokee grandparents. On remand, San Bernardino County Children and Family Services should make reasonable efforts to obtain the death certificate or certificates.

DISPOSITION

The judgment terminating parental rights is reversed, and the case is remanded to the juvenile court with directions to order San Bernardino County Children and Family Services to comply with the notice requirements of ICWA, and to address the specific concerns stated on pages 6 and 7 of this opinion. If, after proper notice, the juvenile court finds that J.K. is an Indian child as defined by ICWA, the court shall proceed in conformity with all provisions of ICWA. If, on the other hand, the court finds that J.K. is not an Indian child, the judgment terminating parental rights shall be reinstated.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.