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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.B. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

E063589

(Super.Ct.No. SWJ1300245)

OPINION

APPEAL from the Superior Court of Riverside County. Timothy F. Freer, Judge.

Affirmed in part; reversed in part with directions.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, Julie Koons Jarvi, Deputy County Counsel
for Plaintiff and Respondent.

K.C. (mother) is the biological mother of two children, J.B. and B.G. (collectively, “children”). Mother appeals from the juvenile court’s order terminating her parental rights under Welfare and Institutions Code¹ section 366.26. Mother does not challenge the substantive findings made by the juvenile court, but contends that the court’s orders must be reversed because the Riverside County Department of Public Social Services (Department) failed to comply with the notice requirement of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) as to B.G. Mother further contends that if B.G.’s case is remanded, J.B.’s case should also be remanded. We agree that the Department failed to comply with ICWA, and remand the matter as to B.G. with directions to the juvenile court to ensure the Department’s compliance with ICWA’s notice requirements. We affirm the orders of the juvenile court in all other respects.

FACTUAL AND PROCEDURAL HISTORY

On April 11, 2013, the Department filed a section 300 petition as to the children, J.B. (a boy, born December 2005) and B.G. (a boy, born August 2012). The children have different fathers. The Department alleged that the children came within the jurisdiction of the juvenile court under section 300, subdivisions (b) and (g). According to the petition, mother denied any Indian ancestry. J.B.’s father also denied having Indian ancestry. The petition did not state if B.G.’s father, F.G. (father), indicated any Indian ancestry.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

On April 9, 2013, an immediate response referral was received with allegations of “Caretaker Absence/Incapacitated.” Mother and father were arrested for out-of-state warrants. The warrants pertained to charges that were filed in Pennsylvania for animal cruelty, child endangerment, possession of marijuana, and possession of illegal firearms. When the social worker arrived at the family’s home in California, the social worker learned from a United States Marshall that father had already been transported to jail. Two large bags of marijuana were seized, which were in the bedroom where B.G. was sleeping. The social worker was unable to interview father regarding Native American ancestry prior to the detention hearing.

Mother had a restraining order against father protecting her and J.B. The restraining order indicated that father could have two hours of contact per week with B.G., which was to be supervised by a professional supervisor at father’s expense. Mother informed the social worker that she obtained the restraining order at the request of a Department worker who came to the house in January 2013. Mother denied any physical altercations with father, and stated that they had a lot of verbal arguments. The restraining order expired on February 15, 2015.

According to mother, she lived in her home with the maternal grandmother (MGM) and the children. She claimed father lived in Yucaipa. Mother stated that father was at the home because they were allowed contact regarding visitation with B.G. Mother indicated that she suffered from postpartum depression after both children were born. She also stated that she had anxiety, but did not take any medication.

J.B. was interviewed by the social worker. According to J.B., he lived with mother, B.G. and father. J.B. did not like father and was glad father was arrested and going to jail. J.B. stated that father hit him and threw him to the ground. J.B. also stated that father made him stand in the sun with bricks in his hands and hot sauce in his mouth. J.B. told the social worker they had functioning utilities in the home but not always enough food. J.B. witnessed mother and father hit each other; J.B. told them to stop but they did not.

J.B. reported that father hid “weed” in the home. Mother told J.B. not to talk about it. Father threatened J.B. that he would call the Department, and J.B. and B.G. would be taken away if J.B. talked about the marijuana. J.B. stated that people had been to the home to give father money for the marijuana a few times.

The social worker spoke with MGM on April 9, 2013. MGM stated the home mother resided in was a lease that was in MGM’s name. Mother was listed on the lease as an approved occupant. MGM wanted custody of the children; she was willing to take mother’s name off the lease and not allow mother in her home.

On April 12, 2013, mother and father were present in court in custody. The juvenile court found J.B. was not an Indian child. The court found a prima facie showing was made that the children came within section 300, subdivisions (b) and (g). The children were detained. In father’s Parental Notification of Indian Status, he claimed he may have Indian ancestry in the Cherokee Tribe. The court found that ICWA may apply.

On May 7, 2013, ICWA notice was filed. Notice was provided to parents, the Bureau of Indian Affairs (BIA), and three Cherokee Tribes. Indian Child and Family Services was also provided with the notice.

A social worker met with J.B. on May 2, 2013. He told the social worker he wanted to live with MGM and visit his dad on the weekends sometimes. J.B. was clear that he did not want to return to the care of mother or father. J.B. felt safe with MGM.

The social worker was denied permission to interview parents regarding the allegations. Due to parents being extradited to Pennsylvania, the social worker was unable to speak with them in regards to the jurisdictional/dispositional hearing. Mother was released from custody and placed on probation in Pennsylvania. She planned to remain there for a few months to take care of her legal issues.

On June 19, 2013, the juvenile court found good ICWA notice. The court found that the children came within section 300, subdivisions (b) and (g). The children were adjudged dependents of the court. The parents were provided with reunification services. Both J.B. and B.G. were placed with MGM on July 29, 2013.

Father called the social worker to report that he was released from prison on October 9, 2013. He stated that he was sentenced to six months of probation. Mother and father lived with the paternal grandfather in Pennsylvania. The only other adult in the home was father's stepmother.

On December 19, 2013, the court found the children were not Indian children and that ICWA did not apply. On January 6, 2014, the court continued family reunification

services as to mother and father. Reunification services were terminated as to J.B.'s father.

Mother reported to the social worker that she relocated to the "Valle Vista" area. She claimed she was not in a relationship with father, but she was working with him to sell fundraiser cards. Father refused to provide his address until he had unsupervised visits with B.G. On July 3, 2014, both mother and father indicated they had the same mailing address. They resided together in a rented room in a house in Hemet. They continued to use marijuana on a daily basis. Mother subsequently reported that she and father separated, and he had moved out of the room. Father again refused to provide his address to the social worker.

Mother had visitation with the children. After missing three consecutive visits, mother was taken off the Department's visitation calendar. On July 21, 2014, mother and father contacted the social worker and requested to resume visitation. Visitation occurred; however, J.B. refused to visit with mother on several occasions. J.B. continued to state that he did not want to live with mother, did not like father, and was fearful of father

On October 24, 2014, the court terminated reunification services and set a section 366.26 hearing.

The Department recommended that parental rights be terminated. MGM was the prospective adoptive parent. The children had a close bond with her and with each other. The children were thriving and appeared to have developed a strong and healthy attachment with MGM.

On March 5, 2015, J.B. told the social worker that he did not want to have any more visits with mother. J.B. stated that mother was mean to him and yelled at him often. J.B. noticed a few weeks earlier that father was a contact on mother's cell phone, which upset J.B. J.B. told MGM that he did not think mother was "done with [father] like she said."

On March 26, 2015, MGM disclosed that she allowed mother to have additional visits at her residence two or three times a week starting in late 2014. MGM stated that mother had threatened her that once mother regained custody of the children, she would not allow MGM to see the children if MGM did not cooperate. MGM's decision to allow additional visitation with mother was based in fear; it was not intended as a favor to mother.

On May 4, 2015, the juvenile court denied mother's section 388 petition and terminated parental rights as to mother and father. On May 19, 2014, mother filed her notice of appeal.

DISCUSSION

A. THE DEPARTMENT'S ICWA NOTICE WAS INADEQUATE

Mother asserts that lack of compliance with ICWA inquiry and noticing requirements mandates reversal. She contends the notices sent to the Indian tribes did not contain available pertinent information, and that the record fails to show the Department complied with its mandatory duty to investigate and to provide all available information concerning B.G.'s Indian ancestry.

The Department responds that mother has forfeited the issue by failing to raise it below. However, the ICWA notice provisions are not the parents' to forfeit. (*In re S.E.* (2013) 217 Cal.App.4th 610, 615 ["Mother and Father did not forfeit any deficiencies in the notice requirements by failing to raise them below because the notice provisions are designed in part to protect the potential tribe's interests"]; *In re A.G.* (2012) 204 Cal.App.4th 1390, 1400 (A.G.) ["ICWA notice issues cannot be forfeited for appeal by a parent's failure to raise them in the juvenile court, because it is the tribes' interest, not the parents', that is at stake in dependency proceedings that implicate ICWA"]; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 [a parent's failure to raise the ICWA's notice requirement in the juvenile court does "not waive the issue on appeal" because the notice requirement is intended, in part, to protect the interests of Indian tribes]; *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267 ["[t]he notice requirements serve the interests of the Indian tribes 'irrespective of the position of the parents' and cannot be waived by the parent".])

We next address whether the Department complied with the requirements set forth under ICWA.

"Congress enacted ICWA to further the federal policy "that, where possible, an Indian child should remain in the Indian community."'" (*In re W.B.* (2012) 55 Cal.4th 30, 48.) "When applicable, ICWA imposes three types of requirements: notice, procedural rules, and enforcement. [Citation.] First, if the court knows or has reason to know that an "Indian child" is involved in a "child custody proceeding," . . . the social services agency must send notice to the child's parent, Indian custodian, and tribe by

registered mail, with return receipt requested. [Citation.] . . . [¶] Next, after notice has been given, the child’s tribe has ‘a right to intervene at any point in the proceeding.’ [Citation.] . . . [¶] Finally, an enforcement provision offers recourse if an Indian child has been removed from parental custody in violation of ICWA.” (*Id.* at pp. 48-49.) “Thorough compliance with ICWA is required.” (*In re J.M.* (2012) 206 Cal.App.4th 375, 381.)

Of concern here is the notice requirement. If an agency “knows or has reason to know that an Indian child is involved” in a dependency proceeding, the agency must send notice of the proceeding to, among others, a representative of all potentially interested Indian tribes. (§ 224.2, subd. (a).) “[F]ederal and state law require that the notice sent to the potentially concerned tribes include ‘available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.’ [Citations.] To fulfill its responsibility, the Agency has an affirmative and continuing duty to inquire about, and if possible obtain, this information. [Citations.] Thus, a social worker who knows or has reason to know the child is Indian ‘is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required in paragraph (5) of subdivision (a) of Section 224.2’ [Citation.] That information ‘shall include’ ‘[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or

aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.’ [Citation.] Because of their critical importance, ICWA’s notice requirements are strictly construed.” (A.G., *supra*, 204 Cal.App.4th at pp. 1396-1397.)

In A.G., the child welfare agency omitted much of the same information from the notice form as omitted by the Department here, without any explanation in the record for the omissions or description of the efforts made to secure the necessary information. (A.G., *supra*, 204 Cal.App.4th at pp. 1394, 1397.) The court concluded “[e]rror is obvious” and issued a limited remand for ICWA compliance. (*Id.* at pp. 1397, 1402.)

Here, father claimed Indian ancestry. His Parental Notification of Indian Status form stated that he may have Cherokee ancestry. He provided no further information. Thereafter, the Department mailed a “Notice of Child Custody Proceeding for Indian Child.” The notice contained father’s name, current addresses and date of birth, and indicated that he may have had ancestry in one of the three Cherokee Tribes. The notice stated that father’s place of birth was unknown. The notice did not include any information concerning father’s parents or grandparents. Moreover, as in A.G., there is no explanation for the Department’s omissions in the record and no reason to presume the omitted information was unavailable to the Department. Because of the Department’s unexplained failure to comply with the notice requirements of ICWA, we must reverse the juvenile court’s order and remand to ensure ICWA compliance. (See *In re Francisco W.* (2006) 139 Cal.App.4th 695, 705-706, 708 [explaining purpose of limited reversal].)

Notwithstanding the above, the Department claims that any inadequacy in the ICWA notice was harmless. ““Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances.”” (*In re S.E., supra*, 217 Cal.App.4th at p. 615.) In this case, we have no basis for finding these omissions harmless. There is nothing in the record to suggest the omitted information, much of it likely critical in tracing father’s Indian ancestry, would not have resulted in a different response from the tribes.

On remand, the Department must either obtain the omitted information and provide new notice to the Cherokee tribes or demonstrate to the juvenile court that it engaged in the efforts required by Welfare and Institutions Code section 224.3, subdivision (c) and California Rules of Court, rule 5.481(a)(4), and was unable to acquire the additional information about father’s family members.

B. MOTHER HAS FAILED TO SHOW THAT THE COURT ERRED IN TERMINATING HER PARENTAL RIGHTS AS TO J.B.

Mother contends that J.B.’s case must be remanded so that his case can be heard concurrently with B.G.’s case.

In essence, although mother asserts no error regarding the termination of her parental rights as to J.B., she contends that J.B.’s case must be remanded if B.G.’s case is remanded to the juvenile court. Mother argues, “[a]s the juvenile court has already found that a sibling relationship exists [between J.B. and B.G.] that must be preserved and that it would be inappropriate to place the brother’s cases [*sic*] in separate postures, [J.B.’s]

case must be remanded to be addressed concurrently with [B.G.'s]" Mother, however, fails to provide any legal authority in support of this claim.

Mother's claim is "'perfunctorily asserted without argument in support'" (*People v. Williams* (1997) 16 Cal.4th 153, 206.) We need not consider mere contentions of error unaccompanied by legal argument, since they have not been properly raised. (*Ibid.*; *People v. Earp* (1999) 20 Cal.4th 826, 884.) "'[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.'" (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) Here, mother fails to make legal arguments or to cite to any pertinent authority in support of her claim.²

Because mother neither alleged that the juvenile court erred in terminating her parental rights as to J.B. nor provided any authority that would support mother's contention that J.B.'s case should be remanded simply because his sibling's case is remanded, we reject mother's argument.

DISPOSITION

As to B.G., the juvenile court's order terminating mother's parental rights and adopting a permanent plan is reversed, and the court's finding that ICWA is not applicable is vacated. The case is remanded to the juvenile court with directions to ensure the Department has complied with the notice requirements of ICWA. If, after new

² We note that mother has cited *In re L.Y.L.* (2002) 101 Cal.App.4th 942, in her argument. That case, however, simply addresses the issue that a parent has the burden of establishing a sibling relationship exists. The issue raised by mother on this appeal, however, is not whether a sibling relationship exists.

notice, any of the Cherokee Tribes claim B.G. is eligible for membership and seek to intervene, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, the Cherokee Tribes make no such claim following new notice, or the court concludes the Department's efforts at compliance were adequate and no further information about father's family is reasonably available, the inapplicability finding and the order terminating mother's parental rights and adopting a permanent plan as to B.G. shall be reinstated. As to J.B., the judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.