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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.F., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,
Plaintiff and Respondent,

v.

J.F.,
Defendant and Appellant.

E064562

(Super.Ct.No. INJ1400055)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.

Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant J.F. (father).

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

Appellant J.F. (father) is the father of A.F. (the child), who was three years old on the date of the challenged order. Father argues the juvenile court's order of August 31, 2015, terminating his parental rights to A.R. should be reversed because the Department of Public Social Services (DPSS) failed to comply with the notice and inquiry requirements of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) (ICWA). We affirm the court's orders based on harmless error because father cannot show the result would have been different without the alleged error and because the child is placed in a prospective adoptive home with her maternal great-aunt, who is a member of the Agua Caliente tribe.

FACTS AND PROCEDURE

First Petition – February 2014

On February 7, 2014, DPSS filed petitions under Welfare and Institutions Code section 300¹ regarding the child and her three older half-siblings. The petitions alleged that the child's mother (mother) abused one of the half-siblings by spanking him with a belt, abuses marijuana and prescription pain medication, and has a history of criminal activity and substantiated child welfare allegations. As to A.F. only, the petition alleged father's whereabouts were unknown and that he failed to provide support.

¹ Section references are to the Welfare and Institutions Code unless otherwise indicated.

Mother told DPSS that father was serving a state prison sentence, but she did not know where. The social worker discovered father had a ten-year history of criminal activity, mostly drug and assault charges and located him at a state prison.

The detention hearing was held on February 10, 2014. Appellant was not present, but was represented by appointed counsel. The Agua Caliente Band of Cahuilla Indians was represented by counsel because mother is a registered member.² Mother told the court that father was not Native American and that he was serving seven to ten years in prison. The juvenile court ordered the children detained but placed with mother.

The jurisdiction and disposition hearing was held on April 9, 2014. Father was not present but was represented by counsel. The juvenile court found father to be a presumed father of A.F. The court took jurisdiction of the child and her half-siblings, placed them with mother, and denied reunification services to father because he would be incarcerated beyond the time allotted for reunification services. Also on that date, father filed with the court a form ICWA-020 Parental Notification of Indian Status. Father checked the boxes indicating he may be eligible for tribal membership and may have Indian ancestry, the child may be eligible for tribal membership, and indicating a lineal ancestor is or was a tribal member. Father listed “Pachanga” as the name of the tribe and “Luiseno” as the name of the band, and indicated the ancestry was through “(Felix [B.]) Great, Great,

² The Agua Caliente Band determined that, although mother is a registered member with the tribe (and receives a monthly tribal allowance), A.F. and her half-siblings are not eligible. Since January 2015, the four children have been placed with their maternal great-aunt, who is also a member of the Agua Caliente Band. This maternal great-aunt is the prospective adoptive parent for the children.

Great, Great, Great, Grandpa.” Father’s counsel told the court about the ICWA-020 and asked that it be filed “though ICWA has been found to not apply.” At the conclusion of the hearing, the court found that the child and her half-siblings are not Indian children and the ICWA does not apply.

Second Petition and ICWA Notice – June 2014

On June 2, 2014, DPSS filed a subsequent petition under section 387, alleging mother placed the child and her half-siblings at risk by continuing to abuse drugs and failing to: maintain suitable housing, maintain contact with DPSS, meet the child’s medical needs, and comply with her case plan.

The detention hearing was held on June 3, 2014. Father was not present, but was represented by counsel. The juvenile court found ICWA may apply. The court ordered the child and her half-siblings detained and placed in foster care.

At issue here in this appeal, on June 19, 2014, DPSS filed an ICWA notice that included mother’s information, along with the following information regarding father— name, address, date of birth, and tribe or band (“Pechanga Band of Mission Indians, Luiseno”). In the box designated for information on the child’s “Paternal Great-grandfather,” DPSS listed the name as “Felix [B.]” and the tribe or band as “Pechanga Band of Mission Indians, Luiseno.” DPSS sent this notice to the Pechanga Band of Luiseno Indians, which received it on June 12, 2014. The Pechanga band sent DPSS a letter dated June 23, 2014, in which it stated “Based on the information you have

provided us, the tribe's Enrollment Department has determined that the minors are not members of the Pechanga Band or eligible for membership."

The jurisdiction and disposition hearing was held on June 23, 2014. Father was not present but was represented by counsel. The juvenile court took jurisdiction and removed physical custody from mother. The court found that the child and her half-siblings are not Indian children, and that the ICWA does not apply. The court authorized visits between the child and the paternal grandmother.

The section 366.26 permanent plan selection and implementation hearing was scheduled for August 4, 2015. Father was present in custody, represented by counsel. Counsel told the juvenile court that father "noted that he is about 32 percent Pechanga. So that may be an issue in terms of ICWA noticing." County counsel represented to the court that "the Pechanga tribe has been noticed." Father's counsel then stated "Never mind. We are submitting on the continuance." The hearing was continued to allow DPSS to provide ICWA notice on behalf of the father of one of the child's half-siblings.

At the section 366.26 hearing held on August 31, 2015, the juvenile court terminated mother's and father's parental rights and chose adoption as the permanent plan.

This appeal by father followed.

DISCUSSION

Father argues DPSS did not comply with the ICWA notice and inquiry requirements when it sent the notice to the Pechanga Band in June 2014 and did not

comply with the ICWA continuing inquiry requirements after father's counsel notified the court at the hearing on August 4, 2015 that father "noted that he is about 32 percent Pechanga." Any error was harmless because father cannot show he would have obtained a more favorable result in the absence of any errors: father provides no information that the child actually is an Indian child and the child was in any case placed in the home of a Native American relative, her maternal great-aunt.

Under ICWA, whenever "the court knows or has reason to know that an Indian child is involved," notice of the proceedings must be given to the relevant tribe or tribes. (25 U.S.C. § 1912(a); accord, Welf. & Inst. Code, § 224.2, subd. (a); Cal. Rules of Court, rule 5.481(b)(1).) "The purpose of the ICWA notice provisions is to enable the tribe . . . to investigate and determine whether the child is in fact an Indian child. [Citation.] Notice given under ICWA must therefore contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. [Citations.]" (*In re Cheyenne F.* (2008) 164 Cal.App.4th 571, 576.) "It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.)

25 Code of Federal Regulations section 23.11(d)(3) (2104) provides that an ICWA notice shall include the following information, if known: "All names . . . and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden,

married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.” (25 C.F.R. § 23.11(d)(3).)

““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.]” (*In re Christian P.* (2012) 208 Cal.App.4th 437, 451.)

“A notice violation under ICWA is subject to harmless error analysis. [Citation.] ‘An appellant seeking reversal for lack of proper ICWA notice must show a reasonable probability that he or she would have obtained a more favorable result in the absence of the error.’ [Citation.]” (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715.)

Here, DPSS sent an ICWA notice in June 2014 to the Pechanga Band of Luiseno Indians containing mother’s information, father’s information, and the name of father’s great, great, great, great, great, grand grandfather, along with his claimed tribal affiliation, “Pechanga Band of Mission Indians, Luiseno.” No other information about Felix B. is included, nor is any information about any other paternal relative, including father’s own mother, with whom DPSS was in contact because she had considered whether to offer to adopt the child, and did for a time visit with the child. Father argues DPSS failed to fulfill its duties under ICWA to obtain additional information from his mother about other paternal relatives, and to at least include her information on the notice it sent to the Pechanga Band. We agree that DPSS erred when it failed to inquire with the paternal grandmother about father’s family’s Native American heritage, and when it

failed to include information about the paternal grandmother on the notice it sent to the Pechanga Band. DPSS was in contact with the paternal grandmother, could have asked her about the family's Native American heritage, and could have included her information on the notice. However, we do not agree that DPSS erred when it failed to inquire further after father's counsel told the juvenile court, without explanation that "father noted that he is about 32 percent Pechanga." This is because DPSS had already included father's information on the notice form, and the Pechanga Band had already been determined as to father's side that the child was not a member of the Pechanga band and neither was father. An "Indian child" for purposes of ICWA must be "either (a) a member of an Indian tribe or (b) . . . eligible for membership in an Indian tribe and . . . the biological child of a member of an Indian tribe" (25 U.S.C. § 1903(4); accord, Welf. & Inst. Code, § 224.1, subds. (a) & (b).) Father's purported new information did not change this determination because it did not transform the child into "the biological child of a member of an Indian tribe."

Further, father cannot show that any error by DPSS was anything other than harmless, for two reasons. First, father does not show, or even allege, that further inquiry or additional information on the notice form would have resulted in the child being declared a member of the Pechanga Band or the child of a member. (*In re Autumn K.*, *supra*, 221 Cal.App.4th at p. 715.) Second, "Congress enacted ICWA to further the federal policy "that, where possible, an Indian child should remain in the Indian community" [Citation.]" (*In re W.B.* (2012) 55 Cal.4th 30, 48.) Here, the child,

along with her half-siblings, is in a Native American prospective adoptive home with their maternal great-aunt, who is herself a member of the Agua Caliente Band. Thus, the broader federal policy behind ICWA is being served despite any errors in the narrow areas of notice and inquiry.

DISPOSITION

The court's orders are affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

CODRINGTON
J.