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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.A.,

Defendant and Appellant.

E064833

(Super.Ct.No. RIJ109609)

OPINION

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

Elizabeth A. Klippi, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

C.A. is the mother (mother) of A.A. and R.A. (the children), who were ages eight and five on the date of the challenged orders. Mother challenges the juvenile court's orders of November 5, 2015, terminating her parental rights and making the children available for adoption. Mother argues the court committed reversible error when it ruled that the Indian Child Welfare Act, 25 U.S. Code, §§ 1901 et seq. (ICWA), does not apply to the children. Because mother is unable to show actual prejudice from any error, we affirm the court's orders.

FACTS¹ AND PROCEDURE

On August 21, 2013, the Department of Public Social Services (DPSS) filed petitions regarding the children under Welfare and Institutions Code section 300 after mother was arrested for domestic violence and child endangerment. Mother and her boyfriend got into a fight in front of the children's nine-year-old half-brother.² Police indicated they had responded to the home on a number of prior occasions because of domestic violence. The whereabouts of the children's father was unknown, so they were placed in foster care.

In the detention report filed August 21, 2013, DPSS stated ICWA does not apply and noted that in a previous child welfare investigation in November 2012, mother had

¹ Because the sole issue in this appeal is ICWA compliance, the statement of facts is tailored to that issue.

² The older half-brother is not a subject of this appeal. He and the children have the same mother.

denied any Native American ancestry. At the detention hearing held on August 22, 2013, the juvenile court found ICWA does not apply. The court ordered the children detained.

DPSS filed the jurisdiction and disposition report on September 12, 2013. DPSS reported that on August 26, 2013, mother reported Native American ancestry on her mother's side of the family with the Blackfoot tribe. In a previous dependency regarding the children's older half-brother in 2005, the juvenile court found ICWA did not apply because the Blackfoot nation is located in Canada and is not a Federally-recognized tribe.³ Also on September 12, 2013, DPSS filed copies of the form ICWA-030 Notice of Child Custody Proceeding for Indian Child that it sent regarding both children to the Blackfeet tribe in Montana and to the Bureau of Indian Affairs.

At the jurisdiction and disposition hearing held on September 17, 2013, the juvenile court initially noted that the court in a 2005 child welfare proceeding found ICWA did not apply, but the notice from the Blackfeet tribe indicating the children's older half-brother was not an Indian child could not be located in the file. The court also found the recent notices to the Blackfeet tribe regarding the children were not timely. Although the record shows DPSS mailed the notices on September 3, 2013, and they were available for pickup at the Browning, Montana post office on September 6, the

³ DPSS explains in its responsive brief that "The Blackfoot Nation today actually consists of four distinct Blackfoot nations, who share a historical and cultural background but have separate leadership: the Siksika Nation, the Kainai or Blood Nation, the Pikanii or Peigan Nation, and the Blackfeet Nation. The first three nations are in Alberta, Canada, and the fourth is in Montana. (Native Languages of the Americas: Blackfoot (Siksika, Peigan, Piegan, Kainai, Blackfeet), at <<http://www.native-languages.org/blackfoot.htm>. [as of September 28, 2016].)"

Blackfeet tribe did not pick them up from the post office until September 10, 2013.⁴ The Blackfeet tribe sent DPSS a form letter dated September 11, 2013, indicating neither of the children nor their older half-brother were listed on the tribal rolls, and therefore were not Indian Children under the ICWA criteria.⁵ The court held that ICWA may apply and ordered DPSS to re-notice the Blackfeet tribe. The court took jurisdiction of the children and granted mother reunification services.

In the report filed March 5, 2014, for the six-month status review report, DPSS recommended continuing reunification services to mother and stated “The Indian Child Welfare Act does or may apply.” On March 7, 2014, DPSS filed ICWA noticing documentation showing the Blackfeet tribe received the ICWA-030 on September 10, 2013, and included the response letter dated September 11, 2013, stating that neither of the children are listed in the tribal rolls and therefore neither is an “Indian Child” as defined in ICWA. Apparently, DPSS did not re-notice the Blackfeet tribe after the September 17, 2013, hearing, but rather used the notices previously sent to comply with the 10-day deadline for the six-month hearing required by section 224.2, subdivision (d). At the six-month review hearing held on March 18, 2014, the court found ICWA does not

⁴ Welfare and Institutions Code section 224.2, subdivision (d), requires the jurisdiction and disposition hearing to be held at least ten days after the Indian tribe or custodian receives the ICWA-030 notice.

⁵ This letter first appears in the record as part of the ICWA noticing documentation filed with the court on March 7, 2014.

apply, based on the letter from the Blackfeet tribe. The court continued reunification services to mother.

In the report filed September 5, 2014, for the 12-month review hearing, DPSS recommended terminating reunification services for mother and stated ICWA does not apply. Mother was still incarcerated and her release date was uncertain. At the 12-month review hearing held on October 21, 2014, the court found that ICWA does not apply, terminated mother's reunification services, and set a section 366.26 permanent plan selection hearing.

The section 366.26 hearing was held on November 5, 2015. The juvenile court terminated mother's parental rights and set adoption as the children's permanent plan, with preference to be given to the current foster parents.

This appeal followed.

DISCUSSION

Mother argues the juvenile court committed reversible error when it found that ICWA does not apply. Mother argues the notice sent to the Blackfeet tribe in Montana was deficient because it lacked the address, birthdate and birth place for the maternal grandmother and did not contain any information for the maternal grandfather or maternal great-grandparents. DPSS responds that ICWA does not apply and no notice was required because the record shows neither of the children is an "Indian child" as defined by ICWA. In the alternative, DPSS argues that even if notice was required, any error was harmless because mother provides no information that the children in fact are

Indian children and would have been found to be Indian children had the ICWA-030 contained the required information.

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 Cheyanne 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, in September 2013, DPSS sent ICWA notices regarding both children to the Blackfeet tribe in Montana. The notices contained mother’s information, most of the children’s father’s information,⁶ and the name and tribe of the maternal grandmother. However, the notices did not contain the maternal grandmother’s birthdate, birth place or address, despite DPSS having contact with her when she was being considered for placement from the beginning of the case up until May of 2014. The notices also contained no information about the maternal grandfather or the maternal great-grandparents, again, despite DPSS having been in contact with the maternal grandmother at the time the notices were sent. Mother argues DPSS failed to fulfill its duties under ICWA to obtain additional information from the maternal grandmother about other maternal relatives, and to at least include the maternal grandmother’s address, birthdate and birth place on the notice it sent to the Blackfeet tribe. We agree that DPSS should have inquired with the maternal grandmother about the Native American heritage of mother’s family and included all available information on the ICWA-030 forms.

⁶ The children’s father told the court that he had no Native American heritage.

However, mother cannot show that this failure by DPSS, and the subsequent error by the juvenile court when it found that DPSS had given sufficient notice under ICWA, was anything other than harmless. 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).) Mother does not establish, or even allege, that further inquiry or additional information on the notice forms would have resulted in the children being declared members of the Blackfoot tribe or the children of a member. (*In re Autumn K.*, *supra*, 221 Cal.App.4th at p. 715.)

At oral argument, counsel for mother argued that *In re Autumn K.* is not factually on point and urged this court to follow three cases in which our colleagues in the Fourth Appellate District, Division One, conditionally reversed the juvenile court’s orders pending proper notice to the Indian tribes. We distinguish each on its fairly egregious facts. In *In re Louis S.* (2004) 117 Cal.App.4th 622, the child’s mother alleged early on that the child was actually eligible for tribal membership, but had not yet registered. Here, mother makes no such allegation. In *In re Francisco W.*, *supra*, 139 Cal.App.4th 695, the child welfare agency conceded on appeal that the notices were deficient, and the only issue was the propriety of limited reversals in ICWA cases. In *In re I.B.* (2015) 239 Cal.App.4th 367, the child welfare agency knowingly failed to provide the Indian tribes with additional information about the child’s ancestors that it received after sending the initial ICWA notices. In the current case, mother has not alleged that the children are

actually Indian children, DPSS disputes that ICWA applies here, and DPSS did not knowingly fail to send information it later acquired about the Indian heritage of the children's ancestors. Mother has not provided legal authority on point enough to persuade this court to ignore the harmless error rule set forth in *In re Autumn K*.

Because mother does not show that any error was reversible, we affirm.

DISPOSITION

The court's orders are affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

SLOUGH

J.