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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.D.,

Defendant and Appellant.

E064955

(Super.Ct.No. SWJ1300888)

OPINION

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

Reversed with directions.

Tiffany Gilmartin, 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.

B.D. (father) appeals from an order terminating the parental rights to his daughter, A.D. His only appellate contention is that the juvenile court erred by failing to ensure compliance with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). After reviewing the record, we agree that it does not demonstrate that the inquiry and notice provisions of ICWA were satisfied and will remand the matter for the limited purpose of fulfilling these requirements.

### I. PROCEDURAL BACKGROUND

The family came to the attention of the Riverside County Department of Public Social Services (the Department) when an immediate response referral alleging drug use by mother, A.J., was received on November 20, 2013. The social worker interviewed A.D. (born 2007) and visited mother's home. Father was not living with the family. A.D. was not dressed appropriately for cold weather, had not eaten since the night before, and her teeth were "extremely decayed, yellow and possibly rotten." The home was unkempt, smelled like bleach and roach killer, and there was no furniture in the living room. Based on these facts, the Department filed a dependency petition that was later amended. On November 25, 2013, the trial court detained A.D. and ordered parents<sup>1</sup> to complete and file the Parental Notification of Indian Status form (ICWA-020).

In February 2014, at the jurisdiction/disposition hearing, the juvenile court found that it had jurisdiction based on father's history of engaging in acts of domestic violence and abusing alcohol and controlled substances. (Welf. & Inst. Code, § 300, subd. (b).)

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<sup>1</sup> Because mother is not a party in this appeal, she will be referred to as needed.

The court formally removed A.D. from the father's custody and ordered the father to participate in reunification services.

In March 2015, at the 12-month review hearing, the juvenile court terminated reunification services and set a permanency planning hearing pursuant to section 366.26. On November 12, 2015, at the Welfare and Institutions Code section 366.26 hearing, the court terminated parental rights.

## II. DISCUSSION

The father contends that the juvenile court failed to comply with the notice provisions of ICWA.

### **A. Additional Factual and Procedural Background.**

At the time of the initial investigation, both parents reported that they may have Indian ancestry (mother with Blackfoot and father with Cherokee), but neither was registered or had any affiliation with the tribes. On November 25, 2013, at the detention hearing, the juvenile court noted: "There is reason to know that an Indian child is/are involved and the [Department] has provided notice to all identified tribes and/or Bureau of Indian Affairs . . . ." The court ordered and each parent filed a Parental Notification of Indian Status (form ICWA-020).

In December 2013, the Department sent Judicial Council Form ICWA-030, which is intended to comply with ICWA notice requirements, to the Bureau of Indian Affairs, Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee Indians; however, the Department did not send notice to

the Blackfoot tribe.<sup>2</sup> The notice included information regarding A.D. and her parents (or else it stated that the information was unknown or unavailable). The record contains proof of mailing, return receipts, and a response from the United Keetoowah Band of Cherokee Indians indicating that, based on the information provided, there is no evidence that A.D. is a descendent of anyone enrolled in the tribe. On December 31, 2013, the juvenile court found “good notice pursuant to ICWA,” and that “ICWA does not apply to the Untied Keetoowah Band of Cherokee Indians.”

In January 2014, the Department filed responses from the Bureau of Indian Affairs, Cherokee Nation, and Eastern Band of Cherokee Indians. None of the tribes that responded asserted that A.D. was a member or eligible for membership. The Cherokee Nation in particular responded that “[i]n order to verify Cherokee heritage,” it needed the names of the paternal grandparents and great grandparents. On February 4, 2014, the court found good notice pursuant to ICWA, and that there was reason to know that an Indian child is involved.

In July 2014, the Department filed the response from the Eastern Band of Cherokee Indians indicating that, based on the information provided, there is no evidence that A.D. is registered or eligible to register as a member of the tribe. In August 2014, the juvenile court found: “ICWA does not apply to the [child] . . . .”

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<sup>2</sup> The lack of notice to the Blackfoot tribe is not erroneous. The Blackfoot tribe is not a federally recognized tribe. (See “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs” (80 Fed. Reg. 1942, 1943 (Jan. 14, 2015)). However, we note that father’s counsel references mother’s tribe as being Blackfeet. (See fn. 3, *post.*)

## **B. Legal Background.**

“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.) An “Indian child” 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, subd. (a).) 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).) “[T]he juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.” [Citation.]” (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

“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.) As such, it must include all available information about the child’s parents, maternal and paternal grandparents and great grandparents, especially those with alleged Indian heritage, including maiden, married and former names and aliases, birthdates, places of birth and death, current and former addresses, and information about tribal affiliation including tribal enrollment numbers. (*In re Francisco W.* (2006) 139 Cal.App.4th 695,

703; Welf. & Inst. Code, § 224.2, subd. (a)(5).) “A ‘social worker has “a duty to inquire about and obtain, if possible, all of the information about a child’s family history”” required under regulations promulgated to enforce ICWA. [Citation.]” (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

““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.)

““The notice requirements serve the interests of the Indian tribes “irrespective of the position of the parents” and cannot be waived by the parent. [Citation.]’ [Citation.] Thus, ‘where the notice requirements of the Act were violated and the parents did not raise that claim in a timely fashion, the waiver doctrine cannot be invoked to bar consideration of the notice error on appeal.’ [Citation.]” (*In re Suzanna L.* (2002) 104 Cal.App.4th 223, 231-232.)

### **C. Analysis.**

Here, both parents indicated that they may have Indian ancestry. However, there is nothing in the record that shows that the Department made an appropriate inquiry into the names and birthdates of the grandparents or great grandparents.

The Department argues that ICWA does not apply, because neither parent nor A.D. was a member of a tribe. However, the record shows that both parents submitted Form ICWA-020, checking the box that indicated they may have Indian ancestry, and the juvenile court found the parents’ responses sufficient to order the Department to give

ICWA notice. (See *In re Miguel E.* (2004) 120 Cal.App.4th 521, 549.) Although various appellate courts have held ICWA notice provisions are not triggered by vague references to Indian heritage (see, e.g., *In re J.D.* (2010) 189 Cal.App.4th 118, 125 [notice not required where paternal grandmother indicated possible Indian ancestry, tribe unknown]; *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520-1521 [father's claim of Indian heritage, without naming the tribe and which he later retracted, insufficient to require notice under ICWA]; *In re O.K.* (2003) 106 Cal.App.4th 152, 154, 157 [grandmother's statement children may have Indian heritage, no known tribe, "too vague and speculative to give the juvenile court any reason to believe the minors might be Indian children"]), here, however, father referred specifically to Cherokee ancestry. This reference was not vague, and it triggered the notice requirement. (See, e.g., *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1198 [mother's indication on Parental Notification of Indian Status form the child may be eligible for membership in the "Apache and/or Navajo" tribes, standing alone, "gave the court reason to know that [the child] may be an Indian child." (Italics omitted.)]; *In re J.T.* (2007) 154 Cal.App.4th 986, 989, 993 [notice requirement triggered by references to Cherokee and Sioux heritage]; *In re Damian C.* (2009) 178 Cal.App.4th 192, 195-196 [mother's reference on her ICWA-020 form to "Pasqua-Yaqui" heritage sufficient to trigger notice requirement].)

Nonetheless, the Department asserts that any deficiency in the ICWA notice is harmless "because it appears A.D. is not an Indian child." We disagree. The Department failed to include the paternal grandparents' and/or great-grandparents' names. Omitting A.D.'s paternal ancestors' names and information in the notice might arguably have been

harmless, if the Department had inquired of father as to such information. Since father had indicated he may have Cherokee ancestry, the social worker should have followed up with father to attempt to obtain the names of his ancestors. As explained in *In re Marinna J.* (2001) 90 Cal.App.4th 731, 738, the requirement of notice is “critical” under ICWA, because it fosters one of the ICWA’s major purposes “to protect and preserve Indian tribes. [Citation.] In fact, under certain circumstances . . . an Indian tribe possesses exclusive jurisdiction over child custody proceedings involving Indian children. [Citation.]” Nothing in the record, however, indicates the Department conducted this inquiry. Because the failure to provide ICWA notice affected the rights of an Indian tribe, such error was not harmless.

“Because the juvenile court failed to ensure compliance with the ICWA requirements, the court’s order terminating parental rights must be conditionally reversed. This ‘does not mean the trial court must go back to square one,’ but that the court ensures that the ICWA requirements are met. [Citations.] ‘If the only error requiring reversal of the judgment terminating parental rights is defective ICWA notice and it is ultimately determined on remand that the child is not an Indian child, the matter ordinarily should end at that point, allowing the child to achieve stability and permanency in the least protracted fashion the law permits.’ [Citation.]” (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168, fn. omitted.)

Based on the law and the record in this case, we conclude that the notice given was not in substantial compliance with ICWA. Further, the record does not demonstrate that an adequate inquiry was conducted. Because we have not found any other error, the

appropriate disposition is a limited remand for the purpose of complying with ICWA. (*In re Terrance B.* (2006) 144 Cal.App.4th 965, 971-975; *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 342-343.) Although only father appealed, the parental rights termination order must be reversed as to both mother and father. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 208.)

### III. DISPOSITION

The order terminating parental rights is reversed. We order a limited remand as follows: The juvenile court is directed to order the Department to comply with the ICWA inquiry<sup>3</sup> and notice provisions. If, after proper notice, a tribe claims that A.D. is an Indian child, the juvenile court shall set a new Welfare and Institutions Code section 366.26 hearing and it shall conduct all further proceedings in compliance with the ICWA and all related federal and state law. If no tribe makes such a claim, the juvenile court shall reinstate all previous findings and terminate parental rights.

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<sup>3</sup> Inquiry shall be made of father as to information relating to A.D.'s ancestors, including their names, addresses, birth dates and places, and if deceased, date and place of death. Also, the Department shall confirm mother's claim that her Indian heritage is Blackfoot, not Blackfeet, so that the Department can discharge its duty to notice the relevant tribe as stated herein.

HOLLENHORST

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J.

We concur:

RAMIREZ

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P. J.

SLOUGH

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J.