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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re P.B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant.

E065020

(Super.Ct.No. SWJ1300959)

OPINION

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

Reversed with directions.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

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

After more than a year of services, J.B. (father) failed to reunify with his daughter, P.B., and the juvenile court terminated his parental rights on December 2, 2015. On appeal, father's only challenge to the order terminating his parental rights is that insufficient evidence supports the court's determination that Riverside County Department of Public Social Services (DPSS) provided adequate notice under the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) We conditionally reverse the order terminating parental rights and remand the matter for the limited purpose of fulfilling ICWA's notice requirements.

I

FACTS AND PROCEDURAL BACKGROUND

P.B. was three years old when she came to the attention of DPSS in December 2013. Her mother had alarmed hospital staff with her bizarre behavior and refusal to cooperate with treatment for P.B.'s fever.¹ Mother was subsequently placed under a 72-hour involuntary psychiatric hold and DPSS took P.B. into protective custody, under the care of mother's friend Monica M.² DPSS filed a dependency petition alleging, among other things, that P.B. came within the meaning of section 300,³ subdivisions (b) (failure

¹ Mother is not a party to this appeal.

² Because of the nature of father's appeal, an exhaustive summary of the facts leading to P.B.'s dependency is unnecessary. There is a more detailed factual discussion in case No. E063415, where we affirmed the juvenile court's order terminating mother's reunification services.

³ Undesignated statutory references are to the Welfare and Institutions Code.

to protect) and (g) (no provision for support) due to mother's mental health problems, father's substance issues, his unknown whereabouts, and his absence from P.B.'s life.

The social worker located father on December 19, 2013. He was "living in the Hemet Mountains" and could not provide a home address. Over a telephone interview he told the social worker P.B. was very important to him and he wanted her placed in his care. He also said he "could possibly have American Indian ancestry with the PALA tribe."

Father submitted a Parental Notification of Indian Status. (Judicial Council Forms, form ICWA-020.) He checked the box stating he "may have Indian ancestry," but left the rest of the form blank. At the January 2014 jurisdiction and disposition hearing, the court asked him for additional information about his possible Indian ancestry. He told the court his grandmother and grandfather were buried on Pala land. The court told him, "If you get any more information about specific tribes, you need to let [DPSS] know. Right now, they will at least notice the Pala tribe." The court found ICWA may apply and continued the hearing to February "for the purpose of ICWA noticing."

On January 15, 2014, DPSS sent notices to the Bureau of Indian Affairs (BIA) and the Pala Band of Mission Indians (Pala) using the form ICWA-030. The notice contained father's name, address, and place and date of birth, but contained no information about any of his relatives, including the grandparents he claimed were buried on Pala land. Pala responded on January 24, that P.B. could not be traced in their tribal records

“through the adult relative(s) listed on the ICWA-030 form” and was therefore not an Indian child, but that “omitted family documentation could invalidate this determination.”

At the continued jurisdiction and disposition hearing on February 5, 2014, the court found the section 300, subdivision (b) allegations against mother and father true, removed P.B. from parental custody (to remain with caretaker Monica M.), and ordered family reunification services for both parents. The court also found DPSS had provided proper ICWA notice and that ICWA did not apply.

During the six-month review period, father asked the social worker if his sister and his mother could be assessed for placement of P.B. In the 12-month status review report, the social worker stated father’s sister had been approved for placement, but had not followed up with DPSS. It is unclear whether father’s mother was ever assessed. The report states DPSS had submitted a referral for her but she never contacted DPSS regarding placement or visitation.

Father received reunification services from February 2014 through July 2015. Initially, he failed to engage in services and was unable to obtain employment or stable housing. Later, however, he completed inpatient and outpatient substance abuse treatment programs, as well as a parenting program, moved into a sober living home, consistently tested negative, and obtained employment (bussing and washing dishes at a restaurant). Unfortunately, just before the 18-month review hearing, father lost his job and housing, stopped visiting P.B., and relapsed on alcohol. At the 18-month review

hearing, the court terminated his reunification services and again found ICWA did not apply.

Pending the section 366.26 selection and implementation hearing, P.B. remained with Monica M. and her husband, the prospective adoptive parents. P.B. was healthy, developmentally on target, and had formed a strong bond with her caretakers. At the section 366.26 hearing on December 2, 2015, the court terminated mother and father's parental rights.

II

DISCUSSION

Father contends the order terminating parental rights should be reversed because insufficient evidence supports the juvenile court's finding that ICWA notice was legally adequate. We agree notice was insufficient.

The law requires DPSS to give notice of dependency proceedings whenever it is known or there is reason to know that an Indian child is involved. (25 U.S.C. § 1912(a); Welf. & Inst. Code, § 224.2, subd. (a); see *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) ICWA notice serves a twofold purpose: “(1) it enables the tribe to investigate and determine whether the minor is an Indian child; and (2) it advises the tribe of the pending proceedings and its right to intervene or assume tribal jurisdiction.” (*In re Desiree F.*, *supra*, at p. 470.)

In addition to the child’s name, and date and place of birth, if known, notice must include the “name of the Indian tribe in which the child is a member or may be eligible for membership, if known.” (§ 224.2, subd. (a)(5)(B).) Notice must also include “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, . . . as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.” (§ 224.2, subd. (a)(5)(C).) “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.) “ICWA notice requirements are strictly construed and must contain enough information to be meaningful. [Citation.]” (*In re J.M.* (2012) 206 Cal.App.4th 375, 380.)

Juvenile courts and child protective agencies have “an affirmative and continuing duty” to inquire whether a child is or may be an Indian child. (*In re H.B.* (2008) 161 Cal.App.4th 115, 121; § 224.3; Cal. Rules of Court, rule 5.481.) As soon as practicable, the social worker is required to interview the child’s parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child’s membership status or eligibility. (§ 224.3, subd. (c); *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539; Cal. Rules of Court, rule 5.481(a)(4).) The juvenile court must determine whether notice was proper and whether ICWA applies to the proceedings, and we review the court’s findings for substantial

evidence. (*In re Christian P.* (2012) 208 Cal.App.4th 437, 451.) An ICWA notice violation is subject to harmless error analysis. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715.)

Here, there is insufficient evidence to support the court's finding that DPSS provided proper notice. The notice contained no information about father's family and there is no indication in the record that DPSS tried to obtain such information from father or from his sister or mother, both of whom were being considered for placement. DPSS could have interviewed father, his sister, and/or his mother about basic information regarding father's grandparents, but apparently failed to do so.

DPSS contends notice was not required because ICWA does not apply. To support this claim, DPSS relies on Pala's response letter "confirm[ing] P.B. is not an Indian child." This argument is circular because, as Pala made clear, its determination was based on the extremely limited information DPSS had provided about father. DPSS cannot rely on its inadequate notice to demonstrate ICWA does not apply.

Where, as here, a parent can identify a particular tribe or nation and a particular relative with potential Indian ancestry, such information is sufficient to trigger ICWA's notice provisions and DPSS's continuing duty to inquire into ICWA's applicability. (See, e.g., *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 256-258 [parents' belief they each may have "Cherokee Indian heritage" was sufficient to trigger notice requirements]; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1405, 1407-1408 [father's "suggestion" that maternal grandparents "were of Native American ancestry"]

was sufficient to trigger notice requirements]; *In re Alice M.* (2008) 161 Cal.App.4th 1198 [mother’s indication on notification form that minor may be eligible for membership in the “Apache and/or Navajo” tribes, standing alone, was sufficient to trigger notice requirements].) Because father indicated he might have Pala ancestry through his grandparents, DPSS should have tried to obtain information about those family members.

DPSS also argues any error was harmless. We disagree. Pala told DPSS it could not trace P.B. in its tribal records “based on the information provided by you” and that “omitted family documentation” could alter its determination. It is possible that with information about father’s grandparents (such as their names, and places and dates of birth and death), Pala could have made a definitive determination regarding P.B.’s eligibility for tribal enrollment.

Finally, DPSS argues if we conclude the juvenile court erred in finding proper notice, we should conditionally reverse the order terminating parental rights for the limited purpose of ensuring adequate notice. In this we agree with DPSS.⁴ As explained in *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168, “[b]ecause 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

⁴ Father also agrees that a limited remand is appropriate.

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.’’

We conclude the notice given to Pala was not in substantial compliance with ICWA and the record does not demonstrate DPSS made an adequate inquiry to obtain father’s familial information. Because father has not asserted and we have not found any other error, the appropriate remedy is a limited remand for the purpose of complying with ICWA. (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 342; *In re B.H.* (2015) 241 Cal.App.4th 603, 608-609.) Although only father appealed, the parental rights termination order must be reversed as to both mother and father.⁵ (*In re Mary G.* (2007) 151 Cal.App.4th 184, 208, 213, citing Cal. Rules of Court, rule 5.725.)

III

DISPOSITION

We conditionally reverse the order terminating parental rights and order a limited remand as follows: The juvenile court shall direct DPSS to make an adequate inquiry regarding father’s ancestors, especially his grandparents (their names, former address, and places and dates of birth and death). If DPSS obtains additional information, it shall send updated ICWA notices to Pala and BIA. If, after proper inquiry and notice, Pala claims P.B. is an Indian child, the juvenile court shall proceed in conformity with all

⁵ Because mother is not a party to this appeal, DPSS should provide her with notice of the limited remand.

provisions of ICWA. If, on the other hand, no response is received or Pala responds that P.B. is not an Indian child, the judgment terminating parental rights shall be reinstated.

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SLOUGH
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.