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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JOEY V., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEY V.,

Defendant and Appellant.

F062051

(Super. Ct. No. 09CEJ601172-1V5)

**OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. David A. Gottlieb, Judge.

Johanna R. Pirko, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and Jeffrey D. Firestone, Deputy Attorneys General, for Plaintiff and Respondent.

This case involves the application of California's statutes implementing the federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA) in juvenile delinquency proceedings pursuant to Welfare and Institutions Code section 600 et seq.<sup>1</sup> On March 15, 2012, we issued an opinion in this case holding that section 224.3, subdivision (a), required the juvenile court and the county authorities to comply with ICWA's inquiry and notice requirements. We reversed the juvenile court's judgment and remanded, directing the court to ensure compliance. The California Supreme Court granted review and on October 24, 2012, it transferred the case back to us with instructions to reconsider in light of *In re W.B.* (2012) 55 Cal.4th 30 (*W.B.*), which was decided on August 6, 2012. Having conducted the requested reconsideration, we now hold that the juvenile court and county authorities were required only to conduct an inquiry into Joey's possible Indian heritage and they satisfied this duty. The judgment will be affirmed.

#### **FACTUAL AND PROCEDURAL HISTORY**

Joey V. is a mentally ill teenager, having been diagnosed with schizophrenia, bipolar disorder, depression and ADD/ADHD. In September 2009, he had a dispute with his mother, leading her to call the police and report that he had shoved and pulled her. The district attorney filed a juvenile wardship petition (§ 602, subd. (a)). Joey admitted one count of misdemeanor battery (Pen. Code, § 242). He was placed under the supervision of the probation department and the Behavioral Health Court program and ordered to live with his grandmother.

In 2010 and 2011, the juvenile court sustained four separate supplemental petitions pursuant to section 602 alleging that Joey violated conditions of his probation. Each petition included allegations arising from conflicts he had with his mother or his stepfather. These resulted in two charges of misdemeanor battery (Pen. Code, § 242) and one charge of misdemeanor vandalism (Pen. Code, § 594, subd. (b)(2)). Other probation

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

violations alleged in the supplemental petitions included not complying with his parents' instructions, missing meetings with his probation officer, and refusing to attend therapy sessions. After sustaining the final supplemental petition, the juvenile court ordered Joey to be placed at the Juvenile Justice Campus and directed the probation department to locate a suitable foster home or group home. A maximum confinement period of six months was set.

The juvenile court received information on several occasions that Joey is or might be an Indian child. The probation department's memo submitted for the jurisdictional hearing on September 15, 2009, reported that Joey's stepfather said Joey's mother was a member of the Cahuilla tribe and had a roll number of 2504. For the same hearing, Joey's mother filed Judicial Council Form No. ICWA-020, the "Parental Notification of Indian Status" form. She checked boxes indicating that at least one of her parents was a member of a federally recognized tribe, and that she and Joey were or might be members of or eligible for membership in the Cahuilla tribe. Probation reports dated January 7, 2010, January 5, 2011, and January 20, 2011, stated that Joey's mother had reported that she and Joey might have Native American ancestry. There is nothing in the record indicating that the juvenile court or the probation department took any action in response to this information.

Joey argued on appeal that the juvenile court and the county authorities were required to comply with all inquiry and notice requirements of ICWA as implemented under California law. We agreed. The judgment was reversed and the matter remanded to the juvenile court with directions to ensure compliance. Our Supreme Court granted review on June 13, 2012, and subsequently transferred the case to us for reconsideration under *W.B.*, *supra*, 55 Cal.4th 30.

### **DISCUSSION**

ICWA, by its own terms, does not apply to juvenile proceedings resulting in "a placement based upon an act which, if committed by an adult, would be deemed a crime."

(25 U.S.C. § 1903(1).) In contrast, Welfare and Institutions Code section 224.3, subdivision (a), imposes a duty “to inquire whether a child ... is or may be an Indian child ... in *any* juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.” (Italics added.)

In *W.B.*, the Supreme Court held that when delinquency proceedings are based on an act which would be a crime if committed by an adult, the Welfare and Institutions Code requires inquiry but not notice:

“[F]rom the language of the statutes, we distill the following. In all juvenile delinquency proceedings, including those alleging adult criminal conduct, the court and the probation department have a duty to *inquire* about Indian status as soon as they determine that the child is in foster care or is at risk of entering foster care due to conditions in the child’s home. [Citations.] *Notice* pursuant to ICWA is generally *not* required in a delinquency proceeding premised on conduct that would be criminal if committed by an adult.” (*W.B.*, *supra*, 55 Cal.4th at p. 55.)

There is a category of exceptions, however: Where the out-of-home placement is based in *no* part on the child’s criminal offense, then all ICWA procedures must be followed. (*W.B.*, *supra*, 55 Cal.4th at p. 59.) Out-of-home placements based solely on so-called status offenses—behaviors such as disobedience, truancy, curfew violations and underage cigarette-buying, which are unlawful only when engaged in by minors—fall within this category because the offense would not be a crime if committed by an adult. (*Id.* at pp. 42-43, 58.) A section 601 proceeding is always of this nature and triggers ICWA whenever it will result in removal from the home. (*W.B.*, *supra*, at p. 58.) Section 602 placements fall into this category in two types of situations: (1) Where “the court sets a permanency planning hearing to terminate parental rights over a delinquent ward, or ... the court contemplates ordering a delinquent ward placed in foster care and announces on the record that the placement is based entirely on parental abuse or neglect and not on the ward’s offense” (*W.B.*, *supra*, at p. 59, italics omitted); and (2) “dual status” cases in counties with protocols for exercising dependency and delinquency jurisdiction concurrently, where the court contemplates terminating parental rights or

placing the child in foster care based only on harmful conditions in the home, not on the child's delinquent conduct. (*Ibid.*) "Unless the delinquency court announces otherwise, on the record, it will be presumed that any placement of a section 602 ward outside the home is based, at least in part, on the ward's criminal conduct." (*Id.* at p. 60.)

The exceptions do not apply here. In explaining its decision to remove Joey from his home, the court referenced Joey's crimes and repeated violations of probation in addition to his parents' failure to establish a safe environment. Thus, the record shows that the juvenile court's placement decision was not based *entirely* on parental abuse or neglect. Therefore, following and applying *W.B.*, *supra*, 55 Cal.4th 30, we conclude that *notice* pursuant to ICWA was not required in this case; only *inquiry* into Joey's possible Indian ancestry was statutorily mandated.

The record affirmatively demonstrates that the requisite inquiry was undertaken. The probation officer learned from Joey's stepfather that Joey's mother is a Cahuilla tribe member. Joey's mother filed the appropriate Judicial Council form to apprise the court of Joey's Indian ancestry. These actions satisfied the inquiry duty. Accordingly, we reject appellant's challenge to ICWA compliance in this case.

**DISPOSITION**

The judgment of the juvenile court is affirmed. Appellant's request for judicial notice filed October 21, 2011, is granted.

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LEVY, J.

WE CONCUR:

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WISEMAN, Acting P.J.

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GOMES, J.