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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

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

KERN COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Plaintiff and Respondent,

v.

LINDA B.,

Defendant and Appellant.

F064963

(Super. Ct. No. JD125533-00 )

**OPINION**

**THE COURT**\*

APPEAL from an order of the Superior Court of Kern County. Louie L. Vega,  
Judge.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J., and Detjen, J.

Linda B. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to her son, Z.B.<sup>1</sup> Mother contends and respondent Kern County Department of Human Services (department) concedes that the department failed to provide notice pursuant to the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) based on a claim of Indian heritage by the child's father. On review, we will conditionally reverse the termination order and remand the matter.

### **BACKGROUND**

Given the narrow focus of this appeal, our summary of the underlying proceedings is brief. In March 2011, the juvenile court adjudged three-month-old Z.B. a dependent child and removed him from his mother's custody without the benefit of reunification services. Mother previously had been physically abusive of her older children who were removed from her custody and with whom she had not reunified. Although the juvenile court set a permanency planning hearing (§ 366.26) for Z.B. in the summer of 2011, it repeatedly found it necessary to continue the hearing.

In early 2012, the department located and served the child's alleged father, Thomas H., with notice of the section 366.26 hearing, then set for late February 2012. Thomas H. made his first appearance before the juvenile court at the February hearing. He also filed with the court a written request for DNA testing to determine whether he was the child's father, along with a written notice that he might have Cherokee and Blackfoot Indian ancestry. The court expressly ordered the DNA testing and found good cause to continue the section 366.26 hearing to a date in April 2012. According to an unsigned minute order from the February 2012 hearing, the juvenile court also directed the department's social worker to provide notice pursuant to the ICWA.

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

The results of the DNA testing later persuaded the juvenile court to find Thomas H. was the child's biological father. Nevertheless, Thomas H. waived any right to reunification services. In the meantime, no action had been taken regarding the ICWA notice issue and no mention of it was made on the record.

The juvenile court subsequently found the child likely to be adopted and terminated parental rights.

### **DISCUSSION**

As the parties agree on appeal, the juvenile court erred by terminating parental rights, without first ensuring that the department complied with ICWA notice requirements based on Thomas H.'s claim of Indian heritage. Notice must be given whenever it is known or there is reason to know that an Indian child is involved in a dependency proceeding unless it is determined that the ICWA does not apply to the case. (§ 224.2, subd. (b).) The combination of the father's biological paternity and his claim of Cherokee or Blackfoot heritage was sufficient to trigger the notice requirement. (*In re Damian C.* (2009) 178 Cal.App.4th 192, 199.)

### **DISPOSITION**

The order terminating parental rights is reversed and the matter is remanded. The juvenile court is directed on remand to assure that the department gives notice of the underlying proceedings in compliance with ICWA (25 U.S.C. § 1913) and section 224.2 of the Welfare and Institutions Code based on the father Thomas H.'s claim of Cherokee and Blackfoot heritage. The department shall document its efforts to provide such notice by filing such documentation and any and all responses received with the juvenile court. If any tribe responds by confirming that the child is or may be eligible for membership within 60 days after receiving proper notice under the ICWA to the Bureau of Indian Affairs (BIA) and any identified tribes, the court shall proceed pursuant to the terms of

the ICWA. If no tribe or the BIA so responds, the court shall reinstate its order terminating parental rights.