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

In re JACOB R., a Person Coming Under the
Juvenile Court Law.

TULARE COUNTY HEALTH & HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

TAMMY C.,

Defendant and Appellant.

F065287

(Super. Ct. No. JJV042226D)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L. Boccone, Judge.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

* Before Kane, Acting P.J., Poochigian, J., and Franson, J.

Kathleen Bales-Lange, County Counsel, John A. Rozum and Amy-Marie Costa, Deputy County Counsel, for Plaintiff and Respondent..

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Tammy C. appeals from the juvenile court's order pursuant to Welfare and Institutions Code section 366.26 terminating her parental rights to Jacob R.¹ She contends the Tulare County Health and Human Services Agency (the Agency) failed to adequately notice all Indian tribes pursuant to the Indian Child Welfare Act (ICWA; 25 U.S.C., § 1901, et seq.) and that the juvenile court failed to make a determination on whether ICWA applied in her case. We reject her contentions and affirm the juvenile court's judgment.

FACTS AND PROCEEDINGS

Jacob tested positive at birth for methamphetamine. Tammy admitted using methamphetamine about a week before he was born. Jacob's father, Chris R., was uncooperative and argumentative with Agency staff, accusing the hospital of fabricating the positive drug test. Jacob had to remain hospitalized in the Neonatal Intensive Care Unit due to a fast heart rate and breathing difficulties.

May 9, 2011, Section 300 Petition

On May 9, 2011, the Agency filed a section 300 petition alleging, pursuant to subdivision (b) that Tammy's drug use while pregnant endangered Jacob and that her history of drug use placed Jacob at risk. Chris R., also had a history of drug use and knew or should have known of Tammy's drug use. The petition further alleged, pursuant to section 300 subdivision (j), that two of Jacob's siblings had been removed from Tammy in 2009 due to her methamphetamine abuse and neglect. Tammy failed to

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

reunify with Jacob's siblings and her parental rights were terminated in September of 2010.

Detention Report

The report prepared in anticipation of the detention hearing indicated that Tammy had "Irish, German, and Black Dutch" ancestry, and she also believed her family had Native American ancestry: Cherokee on her father's side and Choctaw on her mother's side. When asked if any family members were registered with a tribe, Tammy said "we don't have enough for anything." When asked for names and contact information for family members to further interview, Tammy responded that there were no family members to interview, that her father was deceased and she did not know her mother's whereabouts. Tammy stated that, as far as she knew, Chris did not have any Native American ancestry. The report also noted that in a previous case regarding Jacob's siblings, the juvenile court found ICWA did not apply.

May 10, 2011, Detention Hearing

Tammy appeared at the May 10, 2011, detention hearing and was appointed counsel. According to Tammy, Chris did not appear because he had an outstanding bench warrant. The juvenile court questioned Tammy about her Indian ancestry. This time Tammy said that her father "had Choctaw" and her mother "had Cherokee." When asked to provide information to the Agency to help look into her Native American heritage, Tammy stated, "I don't believe there's enough in my blood line to really establish anything." The juvenile court then found there was insufficient information to believe Jacob was a Native American child, but ordered the Agency to "follow up" on the claim of remote ancestry. Tammy was ordered to provide all family records and the names of relatives with more information regarding her Native American ancestry to the

Agency within five days. The Agency was ordered to send a Notice of Child Custody Proceeding for an Indian Child (ICWA-030) form to the Bureau of Indian Affairs (BIA) and identified tribes. Jacob was ordered detained and placed with his siblings in a caregiver's home.

Jurisdiction/Disposition Report

The report prepared in anticipation of the jurisdiction/disposition hearing indicated that, as of May 19, 2011, Tammy had not provided the Agency with any further information regarding her Native American heritage.

The Agency recommended that Tammy be denied reunification services pursuant to section 361.5, subdivision (b)(10), (11) and (13)². The Agency also recommended that Chris be denied services, as he was the non-custodial parent at the time of detention, had not attended the detention hearing, had not made himself available to the Agency and had provided the Agency with a false address.

An ICWA-030 form was sent to the Cherokee Nation, the Choctaw Nation of Oklahoma, the United Band of Cherokee, the Secretary of the Interior, and the BIA on May 27, 2011. The notice provided the names of Jacob, Tammy, and Chris, their birthdates, and their current addresses.

Chris made his first court appearance on May 31, 2011. At the time he was questioned about his Native American ancestry, and the court found "no reason to believe ICWA [was] applicable." The matter was continued for a June 20, 2011 jurisdiction/disposition hearing.

² Reunification services need not be provided if the court has ordered termination of reunification services for any sibling or half sibling of the child (§ 361.5, subd. (b)(10)); if the parental rights of a parent over any sibling or half sibling of the child have been permanently severed (§ 361.5, subd. (b)(11)); or the parent of the child has a history of drug abuse during the three year period immediately prior to the filing of the current petition (§ 361.5, subd. (b)(13)).

A response received from the United Keetowah Band of Cherokee, dated June 6, 2011, stated that, based on the information provided, Jacob could not be traced as a descendent of anyone on that tribe's roll. The Agency sent another ICWA-030 to the Cherokee Nation, the Choctaw Nation of Oklahoma, and the United Band of Cherokee, the Secretary of the Interior, and the BIA on June 14, 2011, providing further relative information on Tammy's side, including the names and former addresses for Jacob's grandparents through whom Native American ancestry was claimed.

Two Agency addendum reports were filed. The first recommended that Chris be given six months reunification services. The second stated that Jacob was placed with seven of his eight half-siblings and that the caregivers and siblings were thrilled to have him in the home.

June 20, 2011, Jurisdiction/Disposition Hearing

At the June 20, 2011, jurisdiction hearing, the juvenile court sustained the petition. It then granted Chris six months of family reunification services, but denied services to Tammy. Tammy was to receive once a month supervised visits as long as Chris was complying with his services.

The findings and orders adopted by the juvenile court stated there was insufficient reason to believe that Jacob is or may be an Indian child covered by ICWA. But it also ordered that Tammy and Chris were to provide any further information on Indian ancestry and that "[b]ased on the claim of Indian ancestry," the Agency was to send notice under ICWA.

Tammy was informed of her appeal rights, but no appeal was taken from the disposition findings and orders.

Six-Month Review Report

The November 29, 2011, report prepared in anticipation of the six-month review hearing stated that that juvenile court had found on May 31, 2011, that ICWA did not

apply. The report also stated that Chris had contacted the social worker only once in six months and had not completed any services and failed to drug test.

Tammy last visited Jacob on July 19, 2011. She dropped out of a residential treatment program on August 8, 2011, and failed to contact the Agency after that date. The Agency requested that further visits for Tammy be denied because she had not visited Jacob since he was two and a half months old and the Agency would be pursuing a permanent plan of adoption. Jacob's initial withdrawal symptoms of tremors and muscle tightness had subsided and he was a well-adjusted infant. The Agency recommended that services for Chris be terminated and a section 366.26 termination hearing be set.

December 12, 2011, Six-Month Review Hearing

Neither Tammy nor Chris appeared at the six month review hearing. Tammy's counsel asked that the juvenile court continue to order visits for her, but the court declined, finding them detrimental, and a section 366.26 termination hearing was set for April 2, 2012.

Tammy was told of her necessity to seek writ review, but no writ was filed.

February 24, 2012, Section 388 Petition

On February 24, 2012, Tammy filed a section 388 modification petition, seeking visitation with Jacob and reunification services. The petition was summarily denied.

Section 366.26 Report

The report in anticipation of the section 366.26 termination hearing recommended termination of parental rights and placement of Jacob for adoption with his current caregivers. The family where Jacob lived had adopted two of his brothers and was in the process of adopting five of his additional siblings. Jacob's oldest sister was eighteen and regularly visited Jacob at the caregivers home.

May 23, 2012, Section 388 Petition and Hearing

On May 9, 2012, Tammy filed a second section 388 modification petition seeking reunification services and visits with Jacob. After a May 23, 2012, contested hearing, the juvenile court found that Tammy had failed to meet her burden of a change of circumstances and denied the petition.

May 23, 2012, Section 366.26 Hearing

At the section 366.26 termination hearing, also held on May 23, 2012, the Agency submitted on the section 366.26 reports and documents in the file. Following argument, the juvenile court followed the Agency's recommendation, terminated parental rights, found Jacob was likely to be adopted and ordered a permanent plan of adoption with his current caregivers.

DISCUSSION

Tammy argues the ICWA notice was insufficient as a matter of law because: (1) only two of the three federally recognizes Cherokee tribes were noticed; (2) only one of the three federally recognized Choctaw tribes was noticed; (3) there were no return receipts in the record indicating that the tribes had been properly noticed; and (4) the notices were not properly addressed to the tribal chairperson or designated agent.

Tammy contends further that the juvenile court failed to make a determination on the applicability of ICWA as to her. Respondent contends that the court's ruling concerning the ICWA has long been final and Tammy cannot complain at this late stage that the ICWA has been violated. We agree with respondent.

In *In re Pedro N.* (1995) 35 Cal.App.4th 183, 185, 189 (*Pedro N.*), we held that a parent who fails to timely challenge a juvenile court's action regarding the ICWA is foreclosed from raising the ICWA notice issues in a subsequent appeal once the court's ruling is final. The proper time to raise such issues is after the disposition hearing. The juvenile court's rulings and findings at the disposition hearing are appealable upon a timely notice of appeal. We noted in *Pedro N.* that the parent there was represented by

counsel and failed to appeal the juvenile court's orders from the disposition hearing. (*Id.* at pp. 189-190.)

In the instant action, the juvenile court's ICWA finding on Tammy was incorporated by reference at the disposition hearing on June 20, 2011. Tammy was informed of her appeal rights, but no appeal was taken from the disposition findings and orders. Tammy filed two separate section 388 modification motions, but failed in either to raise any defects with the ICWA notices or ruling as an issue. Nor did Tammy assert at the termination hearing that the ICWA was still applicable to this case. Tammy was represented by counsel throughout these proceedings, but neither lodged any objections to the juvenile court's finding that the ICWA did not apply or that notice was defective. Instead, Tammy waited to challenge the adequacy of the ICWA notice until she filed her appeal from the ruling at the section 366.26 hearing on May 23, 2012, terminating her parental rights.

The juvenile court's dispositional findings and orders on June 20, 2011, are final and no longer subject to attack by Tammy. (*Pedro N.*, *supra*, 35 Cal.App.4th at pp. 185, 189-191.) Our holding in *Pedro N.* is fully applicable here. Tammy waited until now to object and by her prior silence has forfeited her right to complain on appeal.

DISPOSITION

The judgment is affirmed.