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

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

MERCED COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

L.S.,

Defendant and Appellant.

F067410

(Super. Ct. No. JP000455)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Merced County. John D. Kirihera,  
Judge.

Elaine Forrester, under appointment by the Court of Appeal, for Defendant and  
Appellant.

James N. Fincher, County Counsel, and Shari L. Damon, Deputy County Counsel,  
for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Poochigian, J., and Peña, J.

## INTRODUCTION

L.S., the guardian of Ryan B., appeals from the juvenile court's order pursuant to Welfare and Institutions Code section 366.26 terminating her guardianship to Ryan.<sup>1</sup> L.S. (guardian) argues that the Merced County Human Services Agency (agency) failed to make a proper inquiry of Ryan's Indian ancestry pursuant to the Indian Child Welfare Act (ICWA; 25 U.S.C.S. § 1901 et seq.). We reject the guardian's contention and affirm the juvenile court's orders.

## FACTS AND PROCEEDINGS

### *Petition and Detention Hearing*

On September 9, 2011, a petition was filed pursuant to section 300 stating that L.S. was Ryan's guardian since November 2010 and he was four years old. The petition alleged a social worker responded to a report of general neglect. After a delay of nearly two weeks, the social worker had to obtain an order for inspection to enter the guardian's home. The social worker found the home very cramped with only a narrow pathway winding through stacks of clutter. The countertops, stove, desk, and rooms were covered in clutter. The kitchen floor was slippery with old spills and grime. The bathroom door was latched closed and the guardian was unable to open the door. An officer had to open the latch. Although there were cleaning supplies in the bathroom, the shower and bathtub were filthy. Ryan slept in a hallway.

The petition further alleged that the guardian had never taken Ryan to a dentist and missed an ophthalmology appointment after it was recommended that Ryan have surgery to correct a drooping eye. The guardian also failed to schedule necessary appointments

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

with the Central Valley Regional Center. The mother's and father's whereabouts were unknown and they had not maintained contact with Ryan.

The detention report noted that Ryan's previous guardian, the guardian's mother Ms. W., told a social worker that she had Native American ancestry from the Cherokee and the Choctaw but did not know if they were registered with a tribe. Ryan is the guardian's grandnephew. At the detention hearing on September 12, 2011, the juvenile court detained Ryan and ordered his placement outside the guardian's home. During the hearing, the guardian explained that she was told her grandfather had a number from an Indian tribe. The guardian believed she, her mother, and Ryan had Indian heritage. The guardian conceded she did not have a tribal number but wanted to have one. The guardian thought she was Cherokee and Choctaw, but mostly Cherokee. The juvenile court found the ICWA inapplicable.

#### ***Jurisdiction/Disposition Hearing***

The agency's reports for the joint jurisdiction/disposition hearing stated the court found on September 12, 2011, that the ICWA did not apply. On October 19, 2011, the court adopted the recommended findings of the agency, found the allegations in the petition to be true, and ordered reunification services for the guardian. Included in the court's orders after hearing was a finding that the ICWA did not apply. The guardian did not appeal the juvenile court's findings and orders from the jurisdiction/disposition hearing.

#### ***Subsequent Proceedings***

At the conclusion of the six-month review hearing on May 24, 2012, the juvenile court continued reunification services for the guardian. In its report for the 12-month review hearing, the agency recommended that reunification services to the guardian be terminated and the matter set for a section 366.26 hearing because the guardian had failed

to address the issues that led to the detention. The guardian had failed to address the safety issues around her home, including keeping poisonous chemicals out of reach.

At the contested hearing on January 29, 2013, a private investigator testified that he had inspected the guardian's home and found no safety hazards. The rooms were both clean and habitable. Twenty photographs taken by the investigator were admitted into evidence. The guardian testified that due to her physical conditions and lack of money, she was initially unable to clean up her residence. The guardian was further delayed in doing the needed work due to the death of her mother. A social worker testified that Ryan had been diagnosed with autism, but had still not been scheduled for an appointment to receive services. The juvenile court terminated the guardian's reunification services at the conclusion of the hearing.

The guardian filed a writ petition challenging the juvenile court's order terminating her reunification services on the ground that she substantially complied with her reunification plan. On April 29, 2013, this court filed an unpublished opinion in case No. F066624 denying the guardian's petition. The guardian did not raise the ICWA in her writ petition.

A section 366.26 hearing was conducted on June 4, 2013. At the conclusion of the hearing, the juvenile court terminated L.S.'s guardianship and ordered adoption as Ryan's plan.

### **ICWA CHALLENGE**

The guardian argues the ICWA notice was insufficient because the agency did not perform an adequate inquiry into her Indian heritage. The guardian asserts that the agency failed to comply with the procedural requirements of the ICWA. Respondent argues this issue was forfeited because no appeal was taken from the juvenile court's disposition rulings. We agree with respondent.

The guardian completely fails to acknowledge our opinion in *In re Pedro N.* (1995) 35 Cal.App.4th 183, 185, 189 (*Pedro N.*), which applies waiver and forfeiture to parents who wait until the termination of parental rights to first make a challenge to the ICWA. We reject the guardian's ICWA challenge because it is subject to waiver and forfeiture.<sup>2</sup>

In *Pedro N.*, *supra*, 35 Cal.App.4th at pages 185 and 189, we held that a parent who fails to timely challenge a juvenile court's action regarding the ICWA is foreclosed from raising ICWA issues (including alleged procedural infirmities) once the juvenile court's ruling is final, in a subsequent appeal from later proceedings. The proper time to raise such issues is after the dispositional hearing. The juvenile court's rulings and findings at the dispositional 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 dispositional hearing.<sup>3</sup> (*Pedro N.*, *supra*, 35 Cal.App.4th at pp. 189-190.) The same is true of the guardian in the instant proceeding.

We further note that *Pedro N.* does not foreclose a tribe's rights under the ICWA due to a parent's forfeiture or waiver of the issue for failing to file a timely appeal at the conclusion of an earlier proceeding. (*Pedro N.*, *supra*, 35 Cal.App.4th at pp. 185, 189-190; see *In re Desiree F.* (2000) 83 Cal.App.4th 460, 477-478 [wherein we reversed the juvenile court's denial of a tribe's motion to intervene after a final order terminating

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<sup>2</sup> Given the applicability of *Pedro N.* to the instant action, we do not reach respondent's other contention that the guardian lacks standing to challenge the ICWA.

<sup>3</sup> To the extent the guardian relies on cases such as *In re Marinna J.* (2001) 90 Cal.App.4th 731, 737-739, *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 260 and *In re B.R.* (2009) 176 Cal.App.4th 773, 779, cases that disagreed with *Pedro N.* on the theory that it is inconsistent with the protections and procedures afforded by the ICWA to Indian tribes, we are not persuaded (see also *Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 783-785; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413-1414).

parental rights and invalidated actions dating back to outset of dependency that were taken in violation of ICWA].)

In *Pedro N.*, we held we were addressing only the rights of the parent to a heightened evidentiary standard for removal and termination, not those of the tribe (*Pedro N.*, *supra*, 35 Cal.App.4th at p. 191), or, for that matter, the rights of the child. As a result, we conclude the guardian has forfeited her personal right to complain of any alleged defect in compliance with the ICWA.

#### **DISPOSITION**

The orders and findings of the juvenile court are affirmed.