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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re AVA S., a Person Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. SAVANNAH S., Defendant and Appellant.	F068288 (Super. Ct. No. 516780) **O P I N I O N**

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Poochigian, J.

Savannah S. appeals from a dispositional order of the juvenile court. She challenges the sufficiency of the evidence upon which the juvenile court ordered her seven-month-old daughter, Ava, removed from her custody. (Welf. & Inst. Code, § 361.)[1] Savannah contends the dispositional order must be reversed because there is no evidence Ava was at risk in her care. She also contends the juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA).[2] We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Savannah is a 23-year-old mother with a long history of methamphetamine use. She began using the drug at the age of 12. As a result, she also has a history with child protective services dating back to the birth of her daughter, Abigail, in December 2008. Though Abigail is not the subject of this appeal, the circumstances of her removal and Savannah's failure to reunify with her factored into the juvenile court's decision to remove Ava from Savannah's custody. Consequently, we incorporate facts from Abigail's dependency case as relevant to give context to the case before us.

In December 2008, after Savannah and newborn Abigail tested positive for amphetamines, Savannah agreed to participate in services. She completed inpatient drug treatment but did not comply with aftercare services. Consequently, her case was closed in August 2009. By December 2009, Savannah was homeless and using methamphetamine while caring for one-year-old Abigail. She was offered voluntary services but did not take advantage of them. In January 2010, Abigail was taken into protective custody and Savannah participated in family reunification services. In January

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

[2] Title 25 United States Code section 1901 et seq.

2011, the juvenile court returned Abigail to Savannah's custody with family maintenance services. In March 2012, Savannah relapsed and began using methamphetamine heavily. Abigail was taken into protective custody and in August 2012, the juvenile court found ICWA did not apply and terminated Savannah's reunification services. In early 2013, Savannah's parental rights to Abigail were terminated and in August 2013, Abigail was adopted.

In September 2013, Savannah gave birth to Ava and both tested negative for illicit drugs. However, Savannah had tested positive for methamphetamine and marijuana in July during a prenatal visit. Savannah enrolled herself in Stanislaus Recovery Center for detoxification and graduated from the 30-day drug treatment program in late August. At the time of Ava's birth, Savannah was living in a sober living house.

A social worker from the Stanislaus County Community Services Agency (agency) spoke to Savannah following Ava's birth. Savannah admitted to using methamphetamine and marijuana during her pregnancy with Ava.

The social worker took Ava into protective custody and filed an original dependency petition on Ava's behalf. In the petition, the social worker identified John P. as Ava's alleged father and indicated that Ava may have Indian ancestry. The agency placed Ava with Abigail's adoptive parents.

In September 2013, prior to the detention hearing, Savannah and John completed form ICWA-020, "Parental Notification of Indian Status." John checked the box on the preprinted form stating he did not have Indian ancestry as far as he knew. Savannah checked the box stating she "may have Indian ancestry." On the line provided to identify the name of the tribe, she wrote "Cherokee [number redacted]," a reference to her stepgrandfather, Robert, who is an enrolled member of the United Cherokee Ani-Yun-Wiya Nation. Robert gave the social worker a copy of his enrollment card.

The juvenile court ordered Ava detained and ordered John to take a paternity test. The court set a combined jurisdictional and dispositional hearing (combined hearing) for October 10, 2013. The agency provided Savannah with referrals for a drug and alcohol assessment, parenting classes, and individual counseling.

On September 19, 2013, the agency served the Bureau of Indian Affairs, Secretary of the Interior, Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians, and United Keetoowah Band of Cherokee with notice of the combined hearing by sending them a certified copy with a return receipt of the "Notice of Child Custody Proceedings For Indian Child" (ICWA-030). The ICWA-030 elicits biological relative information in the section denoted number 5. Under that section, the agency identified Savannah as Ava's biological mother and provided the additional information that Savannah's "Step-grandfather is a member of Cherokee Ani-Yun-Wiya Roll# [number redacted]." The agency included a copy of Robert's enrollment card reflecting his full name, roll number, and date of birth. The record contains the return receipts indicating the addressees received the notice on or before September 23, 2013.

In its report for the combined hearing, the agency recommended the juvenile court adjudge Ava a dependent and provide Savannah reunification services. The agency recommended the juvenile court deny John reunification services.

The agency reported Savannah was strongly committed to raising Ava. Savannah was participating in drug treatment and abstaining from drugs. She was also participating in parenting classes and individual counseling. On her own, she enrolled in anger management counseling and in a Celebrate Recovery group.

On October 10, 2013, the juvenile court conducted the combined hearing. The court found that notice of the hearing was properly given noting that ICWA notices were sent and all the green return receipt cards were received. Savannah, through her attorney, asked the court to return Ava to her custody with family maintenance services. The

juvenile court accepted a letter from Savannah to that effect as her offer of proof. The juvenile court sustained the dependency petition and declared Ava its dependent. The court ordered Ava removed from Savannah's custody, ordered Savannah to participate in reunification services, and granted the agency discretion to increase the frequency and duration of Savannah's visits. The court denied John reunification services because he had not undergone paternity testing and was thus Ava's alleged father and not entitled to them.

Following the juvenile court's ruling, Savannah's attorney (counsel) told the court there was an issue with placement. Counsel stated the maternal stepgrandfather in Oklahoma attempted repeatedly, but unsuccessfully, to contact the agency. The juvenile court asked if Savannah wanted Ava placed in Oklahoma. Counsel stated she wanted the tribe to be notified and to be represented at the hearings. The court stated ICWA notices had been sent out and it would determine whether it needed to reconsider placement after the tribe responded. This appeal ensued.

DISCUSSION

I. Removal

Savannah contends there was insufficient evidence to support the juvenile court's removal order. We disagree. In order to remove a child from parental custody, the juvenile court must find by clear and convincing evidence, as relevant here, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody." (Welf. & Inst. Code, § 361, subd. (c)(1).)

Savannah argues there was insufficient evidence Ava would be exposed to a substantial risk of danger in her custody. To support her argument, Savannah points to

evidence that she sought help for her drug use even before Ava was born, progressed in services offered by the agency, and enrolled in additional services to better herself as a parent. Savannah further argues there was an alternative to Ava's removal. She claims Ava could have been placed with her in the sober living facility under the supervision of the staff. She also claims the outpatient treatment program offered daycare for children Ava's age.

We review the juvenile court's dispositional order removing a child from parental custody for substantial evidence, bearing in mind that clear and convincing evidence requires a heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Having reviewed the record, we conclude substantial evidence supports the juvenile court's removal order.

Ava was initially removed from Savannah's custody because Savannah had a long history of methamphetamine use, recently failed to reunify with Abigail, and used methamphetamine during her pregnancy with Ava. Though Savannah was maintaining sobriety and fully participating in services, the juvenile court had good reason to believe Ava would be at risk if returned to Savannah's custody. First, Savannah had only been abstinent for several months. In addition, she had a pattern of sustained abstinence followed by relapse. She demonstrated this pattern while attempting to reunify with Abigail. She successfully completed drug treatment and regained custody of Abigail under family maintenance services. However, she relapsed and for the second time, the agency had to take Abigail into protective custody. The juvenile court was concerned that Savannah would repeat her pattern with Ava and that Ava would experience the trauma of being removed a second time. Given Savannah's history, the juvenile court could reasonably find that returning Ava to her custody would subject Ava to a substantial danger of emotional harm.

The juvenile court could also reasonably find there were no alternatives to removal. There is no evidence on the record, including the record page citations Savannah provides, that Ava could have been placed in her custody at the sober living house or the drug treatment facility.

We conclude, in light of the foregoing, substantial evidence supports the juvenile court's order removing Ava from Savannah's custody.

II. ICWA Notice

Savannah contends the ICWA notice given was inadequate because the information concerning her stepgrandfather, Robert, was not included in sections 7 and 8 of the ICWA-030, sections designed to elicit information about steprelatives. She also contends the agency failed to provide a copy of Robert's enrollment card along with the ICWA-030. We find no error.

"The ICWA is designed to protect the interests of Indian children, and to promote the stability and security of Indian tribes and families" by providing a tribe the option of obtaining jurisdiction and intervening in state court custody proceedings involving an Indian child. (*In re Elizabeth W*. (2004) 120 Cal.App.4th 900, 906.)

An "Indian child" is "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) An "Indian tribe" is one that is federally recognized by the Secretary of the Interior. (25 U.S.C. § 1903(8) & (11).) The Department of the Interior lists federally recognized tribes in the Federal Register.

When the juvenile court knows or has reason to know that a child involved in a dependency proceeding is an Indian child, ICWA requires that notice of the proceedings be given to any federally recognized tribe of which the child might be a member or

eligible for membership. (25 U.S.C. §§ 1903(8), 1912(a); *In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

ICWA notice must include, if known, the Indian child's name, birthdate, birthplace, tribal affiliation, names and addresses of the child's biological parents, grandparents, and great-grandparents and other identifying information, and a copy of the dependency petition. (§ 224.2, subd. (a)(5).) The agency has the burden of obtaining all possible information about the child's potential Indian background and providing that information to the relevant tribe. (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630.) "Notice is meaningless if no information or insufficient information is presented to the tribe" to determine a child's Indian heritage. (*Ibid.*)

The juvenile court "'must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] We review the [juvenile] court's findings for substantial evidence. [Citation.]' [Citation.]" (*In re Christian P.* (2012) 208 Cal.App.4th 437, 451.)

Savannah's contention that ICWA notice was deficient is flawed on multiple grounds. First and fundamentally, there was no evidence ICWA notice was required. There was no evidence Ava is biologically related to Robert. Therefore, under ICWA's definition of an Indian child, she does not qualify. Further, the United Cherokee Ani-Yun-Wiya Nation is not listed among the federally recognized tribes.[3]

Even if ICWA notice were required, the agency provided sufficient evidence to determine whether Ava was eligible for tribal affiliation through Robert. The agency provided Ava's name and date and place of birth on the ICWA-030. It also provided all the information it had about Robert in section 5 of the ICWA-030 — his relationship to

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[3] On our own motion, we take judicial notice of the relevant pages of the Federal Register, 77 Federal Register 47868 (Aug. 10, 2012), pursuant to Evidence Code sections 452, subdivision (c) and 459, subdivision (a).

Ava, the name of his tribe, and his roll number. The fact that the agency did not also include the same information about Robert in sections 7 and 8 does not defeat a notice requirement assuming one exists. In addition, contrary to Savannah's assertion, the agency also provided, along with the ICWA-030, a copy of Robert's enrollment card[4] reflecting his full name and date of birth, but more importantly, it reflected his roll number which corresponded to the roll number provided in the ICWA-030 and through which his tribal membership could be confirmed.

We conclude substantial evidence supports the juvenile court's finding proper notice was provided under ICWA. We find no error on this record.

DISPOSITION

The juvenile court's dispositional order removing Ava from Savannah's custody is affirmed.

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[4] The agency references this fact in its "Jurisdictional/Dispositional Report."