

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

In re S.F. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

F072607

(Super. Ct. Nos. 13CEJ300090-1,
13CEJ300090-2, 13CEJ300090-3,
& 13CEJ300090-4)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Brian M. Arax, Judge.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

* Before Levy, Acting P.J., Detjen, J. and Peña, J.

D.T. (mother) appeals from an order terminating her parental rights to her four children pursuant to the provisions of Welfare and Institutions Code section 366.26. Her only argument is that the juvenile court erroneously concluded the Indian Child Welfare Act (ICWA) did not apply. Mother asserted the record was insufficient to permit the juvenile court to conclude the ICWA did not apply because the Fresno County Department of Social Services (Department) failed to file the notice sent to the tribes, and the certified mail receipts showing those notices were actually sent.

Mother's argument was based on an incomplete record. Department filed a motion to augment the record. The augmented record provided the information mother claimed was missing. Mother did not respond to this additional information by filing a reply brief. Our review of the information suggests Department complied with its statutory duties and no error occurred. Accordingly, we affirm the order terminating mother's parental rights.

FACTUAL AND PROCEDURAL SUMMARY

A detailed description of the facts and procedure underlying the case is unnecessary to resolve the issue in this case. Accordingly, we will briefly summarize the proceedings.

When Department first became involved with the family, mother had two children S.F and J.T.¹ Initially, mother agreed to participate in family maintenance services. A petition was filed on April 3, 2013, alleging the children came within the jurisdiction of the juvenile court. On November 19, 2013, the juvenile court found it had jurisdiction over the two children. At the disposition hearing, the children were placed outside the home, and reunification services were ordered for mother and the father of these children. The juvenile court found the ICWA did not apply.

¹ The father of S.F. and J.T. appeared at one hearing, and then could no longer be located by his attorney.

On January 30, 2014, a second petition was filed, this petition pertained to mother's newborn child, M.M. It was determined the ICWA may apply, based on the statement of the father of this child, J.M. (hereafter father) who is not the father of the older two children. M.M. was detained and services provided to mother and father. The juvenile court found it had jurisdiction of M.M. on June 10, 2014.

On May 27, 2014, the two older children were returned to mother with family maintenance services provided to the family.

On August 26, 2014, the juvenile court held a disposition hearing for M.M. at which time it removed the child from the parents' custody and ordered reunification services for both. The juvenile court found the ICWA did not apply.

In January 2015, additional evidence came to light about mother and father. A third petition was filed, this one pursuant to Welfare and Institutions Code section 342. All three children were detained.

On April 23, 2015, a fourth petition was filed, this one seeking juvenile court jurisdiction over mother's newborn child, C.M. The juvenile court ordered the child detained.

A contested jurisdiction/disposition hearing was held regarding the three older children on May 8, 2015. The juvenile court relied on the reports prepared by Department to support its ruling. We will summarize the information on which the juvenile court relied in making its ruling.

On January 2, 2015, the emergency operator received a call asking for assistance because J.T. was having seizures. J.T. was taken to the hospital where it was discovered J.T. had second and third degree burns on his face, torso, groin, buttocks, and back. The burns were several days old. Mother provided several different explanations for the burns. Surgery was required to care for J.T. It appeared J.T. was burned by hot water in the shower, and that he was forced to stay in the shower for an extended period of time.

In investigating the injuries to J.T., videos were discovered on mother's phone. These videos showed four-year-old S.F. committing violent acts to two-year-old J.T. Mother could be heard encouraging S.F. to kick and hit J.T. At one point S.F. walked away, and mother ordered her back to strike J.T. again. Mother was heard to instruct S.F. on how to hit J.T. S.F. eventually slammed J.T. against the wall causing his head to make a loud noise. Mother told S.F. to do it again. Other videos were also discovered showing mother abusing J.T. Father could be heard in the background laughing and telling mother she had better not let anyone see the video.

The juvenile court determined it had jurisdiction over the children, and terminated all services to the parents. On October 13, 2015, the juvenile court terminated the parental rights of all parents, and found the children were adoptable. Mother appeals from the termination of her parental rights.

DISCUSSION

The primary argument made by mother in her brief was that there was insufficient evidence to support the juvenile court's order finding that the ICWA did not apply. Mother's argument was based on the state of the record when she filed her opening brief.

The record indicated the father of M.M. and C.M. filled out an ICWA-020 form indicating he may have Indian ancestry. On August 15, 2014, Department filed a document purporting to be the response of the 15 Indian tribes it contacted. According to this document, each tribe indicated, in essence, the children were not eligible for membership in their tribe, so the ICWA did not apply.

Based on the tribes' responses, Department filed a motion to have a determination made by the juvenile court finding that the ICWA did not apply. At the August 26, 2014, hearing, the juvenile court found the ICWA did not apply.

However, mother argued in her opening brief the record is inadequate to permit the juvenile court, or this court, to determine if Department complied with the relevant statutes. According to mother, because the record does not contain copies of the ICWA

notices served on the various tribes, nor the copies of the certified mail receipts, the juvenile court erred when it concluded the ICWA did not apply. To support her argument, mother cited to *In re H.A.* (2002) 103 Cal.App.4th 1206, 1214-1215, which holds, in essence, the Notice of Involuntary Child Custody Proceeding Involving an Indian Child and the registered mail return receipts must be provided to the juvenile court to ensure the department provided sufficient information to the tribe to permit them to properly determine if the child was eligible for membership in the tribe. The lack of documentation in the record, according to mother, prevented a finding Department complied with the ICWA because she could not verify Department had correctly filled out the forms, or actually mailed the forms to the correct parties.

Department responded to mother's brief by filing a motion to have the record augmented with the documentation mother claimed was missing from the record, and which had apparently been inadvertently omitted when the record was prepared. The supplemental clerk's transcript was filed on February 18, 2016. It contains the Notice of Child Custody Proceeding for Indian Child (ICWA-030). This form indicates that M.M.'s father claimed the child may be eligible for membership in the Apache, Cherokee, Choctaw, or Blackfeet tribes, and included notification to the Bureau of Indian Affairs. Parental information was provided for both mother and father, the various tribes to which the notice was sent were identified, and information about the paternal grandparents was provided. Finally, information was provided about father's biological grandmother who, presumably, was the source of the claimed Indian ancestry, as well as father's biological grandfather. The names and addresses of the various tribes served with this information was included in the form. This portion of the record also includes the Parental Notification of Indian Status (ICWA-020) for mother and father. Finally, included were certified mail receipts showing service of the notice on both parents as well as the tribes identified in the notice, and the receipt showing the service was completed.

Once this documentation was filed, Department filed a brief asserting that the record was complete, and since an inadequate record was the only argument on which mother relied in her opening brief, the filing of the supplemental clerk's transcript rendered mother's argument moot.

Mother did not file a reply brief, impliedly conceding that the record was now complete and the juvenile court fully complied with the ICWA.

We have reviewed the information in the supplemental clerk's transcript. It appears to be complete, with nothing to indicate the notice was deficient in any manner. Mother's failure to point out any purported errors in the documentation confirms our conclusion.

Mother also asserts that Department failed to comply with its statutory duties as to the two older children, S.F. and J.T. Mother acknowledges that she never claimed to have Indian ancestry, and also impliedly admits the father of these children did not claim Indian ancestry. However, she asserts Department failed to inquire of this father to determine if he had Indian ancestry.

There is nothing in the record to suggest this father had Indian ancestry. The record also suggests he had minimal involvement and minimal interest in the proceedings. Department learned from this father's mother that she did not know of any Indian ancestry. Department also indicated the father of S.F. and J.T. had not made himself available for an ICWA inquiry.

If the juvenile court or the department has reason to know an Indian child is involved, the department is "required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members to gather the information required" (Welf. & Inst. Code, § 224.3, subd. (c).) Here, neither the juvenile court nor Department had reason to know if S.F. or J.T. had Indian ancestry. Indeed, there is nothing in this

record to indicate they do have Indian ancestry, which is consistent with their father's almost complete absence from the proceedings. No error occurred.

DISPOSITION

The judgment is affirmed.