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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re O.B., a Person Coming Under the  
Juvenile Court Law, et al.

H037449  
(Santa Clara County  
Super. Ct. Nos. JD19149, JD19150)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

V.B.,

Defendant and Appellant.

V.B. appeals from a juvenile court order, issued on August 15, 2011, that suspended her ability to visit her daughters, the minors O.B. and A.B., for one year. She rests her appeal on a claim that the Santa Clara County Department of Family and Children's Services (Department) failed to inquire adequately whether the two children belonged to any Indian tribe that might have the right to intervene in the case and seek to do so. On March 14, 2012, however, the juvenile court issued a supplementary order that definitively resolves the current controversy in favor of the Department. We took judicial notice of that order on March 26, 2012. Accordingly, we will dismiss the appeal as moot.

## FACTS AND PROCEDURAL BACKGROUND

Only a few of the facts and a small part of the procedural background are relevant to the narrow issue presented in this appeal: did the juvenile court err in its ruling that there was adequate notice to and a valid response from Indian tribes, required under the federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA), regarding the minors' and other family members' possible tribal ancestry? We conclude that there was no error.

On August 13, 2008, the Department filed petitions to make the minors dependents of the juvenile court under Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (a), (b), (g), and (j) (serious physical harm, failure to protect, no provision for support, and abuse of sibling). The petitions reported that O.B. and A.B. might have Indian ancestry. They were removed from appellant's home. Second amended petitions filed on October 7, 2008, deleted the subdivision (g) allegation (no provision for support), but continued to state that the minors might have Indian ancestry.

On August 26, 2008, the Department sent ICWA notice of the child custody proceedings to a number of Indian tribes. Although the juvenile court found, on October 9, 2008, that notice was properly sent, substantive responses from certain tribes had not been received and some of them would remain dilatory for a long time.

By October 8, 2008, the minors had been placed with foster parents who are members of the extended family. On October 9, 2008, the juvenile court ordered reunification services for appellant.

On August 17, 2010, the juvenile court issued orders terminating appellant's reunification services but allowing her to visit the minors twice a week under supervision.

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<sup>1</sup> Further unlabeled statutory references are to the Welfare and Institutions Code.

On March 1, 2011, the minors filed section 388 modification applications that, as relevant here, sought an end to the twice-weekly visits. The applications alleged that the visits were continuing to be traumatic for the minors.

On August 15, 2011, the juvenile court granted the modification petitions. It ordered appellant's visits with O.B. and A.B. suspended for one year. The court also ordered a permanent plan hearing under section 366.26, ruling that awarding the foster parents legal guardianship would be suitable.

In August of 2011, it remained the case that certain tribes had not replied to report whether the minors might be tribal members and come under ICWA's protective provisions. To write a report for the combined section 388 modification hearing (which is the subject of the appeal herein) and section 366.3 status review hearing, a Department employee had to telephone tribal representatives, and they told her that the minors were not within their jurisdiction. Those informal assurances, however, did not satisfy the Department.

Additional efforts finally resulted in a complete record regarding ICWA. By February 27, 2012, all tribes, including those that had not been heard from before, had formally responded in writing, all in the negative regarding a legal interest in the minors. The juvenile court was apprised of this development and, as noted, on March 14, 2012, it ruled, correctly, that "the Indian Child Welfare Act does not apply to" the minors.

#### DISCUSSION

As noted, appellant appeals from the juvenile court's August 15, 2011, order suspending her visits with the minors for one year. She does so on the ground that notice to three tribes that had not been heard from as of the summer of 2011 was defective.

The three tribes to which appellant refers are the Eastern Band of Cherokee Indians, in North Carolina; the Match-E-Be-Nash-She-Wish Band, in Michigan; and the Pokagon Band of Potawatomi Indians of Michigan.

As noted, the Department sent its notices in 2008. At the time, information printed in the August 2, 2006, Federal Register was the latest official source of addresses for ICWA notices to these tribes. (71 Fed. Reg. 43788–43807.) The Department, in its response brief, provides a table comparing the addresses it used to those provided in the Federal Register. Reviewing the record and examining the Federal Register, we have confirmed the table’s accuracy and the relevance of the dates and reproduce the resulting data here:

<u>Address used by the Department</u>	<u>Address in 2006 Federal Register</u>
Eastern Band of Cherokee Indians Family Support Services ICWA Representative P.O. Box 507 (15 Emma Taylor Road) Cherokee, North Carolina 28719	Eastern Band of Cherokee Indians Barbara Jones, Director Family Support Services P.O. Box 507 Cherokee, North Carolina 28719
Match-e-be-nash-she-wish Band ICWA Representative P.O. Box 218 (1743 142nd Avenue) Dorr, Michigan 49323	Match-E-Be-Nash-She-Wish Band of Potawatomi Indians of Michigan Leslie Pigeon, ICWA Coordinator P.O. Box 306 1743 142nd Avenue, Suite 8 Dorr, Michigan 49323
Pokagon Band of Potawatomi Indians ICWA Representative P.O. Box 180 Dowagiac, Michigan 49047	Pokagon Band of Potawatomi Indians of Michigan Kathleen McKee, TSS Director 58620 Sink Road Dowagiac, Michigan 49047

We may take judicial notice (Evid. Code, §§ 452, subds. (g), (h), 459, subd. (a)) of the facts that (1) many of the addresses are substantially similar and (2) where they differ, as in the case of the two different post office boxes in Dorr, Michigan, or the use or nonuse of a post office box in Dowagiac, Michigan, postal workers in small towns, which these are, are familiar with individual addressees and often redirect incorrectly addressed mail to the right address. There can be no doubt that this occurred in each case here,

because the mailings to the tribes generated a return receipt from each, acknowledging receipt. Thus, any possible error by a Department employee in inscribing a particular address on the face of an envelope for mailing was harmless. Because that is so, the juvenile court did not err in certifying that the minors did not fall within ICWA's ambit. (See *In re Z.W.* (2011) 194 Cal.App.4th 54, 61–63.)

As the Department notes, it is not enough to show that a return receipt was received from each tribe. The Department must show that notices were received by individuals authorized to decide whether a minor falls within the tribe's jurisdiction. (*In re J.T.* (2007) 154 Cal.App.4th 986, 994.) In this case, it has so shown, because each tribe has now responded, stating that the minors are not a subject of interest.

Appellant also notes in passing that the Department stated that the minors had a relative named Sidney Stone who was listed on the 1906 Final Roll, an enumeration of Indians undertaken in that year (see *In re X.V.* (2005) 132 Cal.App.4th 794, 801). Appellant does not proceed to argue that notice was defective in this respect, however. She argues that Sidney Stone may have been a relative and an enrolled tribal member, but that argument is ancillary to and dependent on the argument that notice was not proper. Thus, this reference does not detract from the tribes' responses that the minors did not fall within their jurisdiction.

Accordingly, no controversy remains. "When a controversy which is the subject of a judgment or order from which an appeal has been taken no longer exists, the appeal should be dismissed." (*Rees v. Gardner* (1960) 185 Cal.App.2d 630, 632.) We shall dismiss the appeal as moot.

CONCLUSION

The appeal is dismissed as moot.

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Duffy, J.\*

WE CONCUR:

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Rushing, P. J.

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Premo, J.

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\* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.