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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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

H038554
(Santa Cruz County
Super. Ct. Nos. DP002602,
DP002603, DP002604)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

L.O.,

Defendant and Appellant.

L.O. (Father), the presumed father of B.O., L.O., and E.O., appeals from the dispositional order in this dependency case. The juvenile court declared the children dependents of the court (Welf. & Inst. Code, § 300)¹ and ordered them placed in the custody of their mother, D.O. (Mother). Mother was ordered to receive family maintenance services. (§§ 362, subd. (b), 16501, subd. (g).)

On appeal, Father contends the juvenile court erred by failing to make an order regarding his visitation with the children. He further contends that the juvenile court

¹ Unspecified section references are to the Welfare and Institutions Code.

erred by either (1) impliedly finding that proper notice was given under the Indian Child Welfare Act (ICWA) or (2) failing to make any finding regarding the sufficiency of the notice given under the ICWA.

For reasons that we will explain, we will affirm the juvenile court's dispositional orders.

BACKGROUND

A. Section 300 Petitions

On March 2, 2012, the Santa Cruz County Human Services Department (Department) filed petitions alleging that the children fell within the dependency jurisdiction of the juvenile court under section 300. At the time, B.O. was 14 years old, L.O. was 10 years old, and E.O. was 8 years old. The petitions alleged that there was a substantial risk the children would suffer serious physical harm (§ 300, subd. (a)), that the parents had failed to protect the children (*id.*, subd. (b)), and that E.O. was suffering emotional damage (*id.*, subd. (c)).

On December 1, 2011, a mandated reporter had called with concern about E.O., who had a big bruise on her nose. Father had kicked E.O. in the face two weeks earlier. Mother claimed not to have known about the bruise until the day before. The Department had also received numerous prior reports regarding the children. There were allegations that Father had slapped E.O. in the face and kicked her in the back while drinking heavily, that Mother was unable to care for the children due to homelessness and mental health issues, that Father had failed to feed and properly clothe the children, that Mother's boyfriend had bruised L.O., and that Father had hit L.O. in the head.

Mother had full custody of the children following her 2007 divorce from Father. However, she sent the children to live with Father at some point because she was homeless and using drugs. She knew that Father was often drunk and that his adult children, who resided with him, were involved with gangs and were often drunk. In the

summer of 2011, after Father hit E.O. in the face, she took the children back. Mother allowed the children to visit Father regularly, until Father kicked E.O. in the face in November of 2011. Since that time, Mother had been regularly participating in drug and alcohol programs.

When Father spoke to the social worker by telephone, he seemed to be intoxicated. He had not seen the children in a month. Father denied hurting the children and denied that he had been drinking. Father had been arrested approximately 32 times for crimes including battery, theft, weapons possession, and narcotics possession.

The children confirmed that Father had physically abused each of them. E.O. reported that Father had hit her in the mouth, eye, ribs, and nose. She had also seen Father hit B.O. and L.O. Father's adult son had blown marijuana smoke into her face and had threatened to hit her. Father was often very drunk. She did not feel comfortable around him.

B.O. reported that Father had thrown a frying pan at him, hitting him in the ribs and leaving a bruise. Father had also punched him in the stomach, chest, and face. He worried about his siblings, as Father would hit them when he was drunk, which was very often. In addition, Father's adult son had hit him.

L.O. reported that Father had recently hit him on the back. Father had previously hit L.O. with a hairbrush on the back of the head. He had seen Father hit E.O. and B.O. He still wanted to see Father, but was not ready yet. He felt safe with Father only when Father was sober.

B. Jurisdiction/Disposition Reports and ICWA Notices

The Department's jurisdiction/disposition reports, filed on April 24, 2012, recommended that the children be declared dependents of the court and that family maintenance services be granted to Mother.

The reports reflected that B.O. had no desire to see Father. L.O. missed Father but understood he could not see Father “right now” due to the physical abuse. E.O. also missed Father and wanted to see him soon.

Father spoke to a social worker on March 22, 2012, and he denied the allegations of physical abuse and frequent intoxication. However, Father had yet to “present himself” or to attain presumed father status. The Department indicated that it would assess whether or not to offer Father services when he met those requirements.

During his contact with the social worker on March 22, 2012, Father stated that he had Apache heritage. The social worker was subsequently unable to reach Father again to obtain further information. Mother denied having any Indian ancestry, and Mother filed a Parental Notification of Indian Status stating she had no known Indian ancestry.

Based on the information Father provided, the Department notified the Bureau of Indian Affairs (Bureau) and eight Apache tribes of the scheduled jurisdictional hearing, via certified mail. The ICWA notices provided the tribes with the children’s names and dates of birth as well as the names, dates of birth, and addresses of Father and Mother. The notices stated that all information about the children’s grandparents and great-grandparents was unknown. Return receipts were signed by seven of the tribes and the Bureau.² (See Cal. Rules of Court, rule 5.482(b).)³ Responses were sent by two tribes, which had determined the children were not members.

² The social worker reported that “[a]ll parties except for the Jicarilla Apache Nation received proper notice” The record does not contain a certified mail receipt from the Jicarilla Apache Nation, but Father does not claim any error in this regard. (See *In re Edward H.* (2002) 100 Cal.App.4th 1, 4 [“proper notice to some but not all possible tribes in which a dependent child may be eligible for membership does not violate the ICWA provided the agency also gives notice pursuant to 25 United States Code section 1912 to the Bureau”].)

³ All further rule references are to the California Rules of Court unless otherwise indicated.

C. Jurisdictional and Dispositional Hearings

On April 24, 2012, the date set for the jurisdictional hearing, Mother waived her right to a hearing and submitted the petition based on the social worker's report.

Father made his first appearance at the April 24, 2012 hearing. The juvenile court found him to be the presumed parent of each child. The court inquired about his Indian ancestry and Father confirmed his belief that he had Apache heritage. The court asked Father to provide "further information" about his family history, including dates of birth, to the social worker "immediately." Father agreed. The court asked if he had any additional information at that time. Father stated that his parents and older sister were deceased and that he was trying to find paperwork containing their birth dates. The court reiterated that Father should "continue to work with the social worker" on that issue.

The juvenile court granted Father's request for a continuance of the jurisdictional and dispositional hearings as to him, and set the matter for May 8, 2012. Father asked whether there was a "provision for visitation with him." The juvenile court stated, "Supervised visitation once per week." The social worker noted that "visitation needs to be supervised, and not by the mom." The Department requested that they "deal with it" at the next hearing.

On May 8, 2012, Father failed to appear. He had telephoned the social worker to say he was ill, but he had not had any contact with his attorney, who noted that the telephone number Father had provided was no longer in service. The juvenile court continued the matter again, to May 17, 2012.

On May 17, 2012, Father failed to appear again. His attorney stated she had not had any contact with him, that his phone number was still out of service, and that the voice mailbox had not been set up on his alternate phone number. She requested another continuance.

The juvenile court denied Father's continuance request. The court found the children to be dependents of the court and ordered they remain with Mother, under the

supervision of the Department. The court ordered that Mother receive family maintenance services. (See §§ 362, subd. (b), 16501, subd. (g).) It noted that the Department could assess Father for services “should he come forward,” and it set a six-month review date.

DISCUSSION

A. Visitation

Father contends the juvenile court erred by failing to make any kind of visitation order for him at the May 17, 2012 hearing. He claims that the juvenile court could deny him visitation only if it found that visitation would be detrimental to the children or that it would jeopardize their safety. As we shall explain, the juvenile court is not required to order reunification services such as visitation when the children are placed with the custodial parent.

When a child is not removed from his or her custodial parent in the dependency proceeding, section 362 governs the disposition.⁴ Family maintenance services must be

⁴ Section 362 provides: “(a) If a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. [¶] (b)(1) To facilitate coordination and cooperation among agencies, the court may, at any time after a petition has been filed, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to a child for whom a petition has been filed under Section 300, to a nonminor, as described in Section 303, or to a nonminor dependent, as defined in subdivision (v) of Section 11400, regardless of the status of the adjudication. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services. [¶] (2) The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child, nonminor, or nonminor dependent is eligible for those services. With respect to mental health assessment, treatment, and case (continued)

provided to the custodial parent, but the non-custodial parent is not entitled to reunification services. (Former § 362, subd. (b); *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 20 (*Pedro Z.*); *In re A.L.* (2010) 188 Cal.App.4th 138, 145 (*A.L.*)) When the child is placed with a custodial parent who is receiving family maintenance services, “[t]he goal of dependency proceedings—to reunify a child with at least one parent—has been met.” (*Pedro Z.*, *supra*, at p. 20.)

In *A.L.*, *supra*, 188 Cal.App.4th 138, the dependent child was placed with her mother, who was ordered to receive family maintenance services. The father was denied reunification services. (*Id.* at p. 142.) On appeal, the father contended that he was

management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court’s determination shall be limited to whether the agency has complied with that chapter. [¶] (3) For the purposes of this subdivision, ‘agency’ means any governmental agency or any private service provider or individual that receives federal, state, or local governmental funding or reimbursement for providing services directly to a child, nonminor, or nonminor dependent. [¶] (c) If a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300, and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court. [¶] (d) The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child’s best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300. [¶] (e) If a child is adjudged a dependent child of the court, the juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter to ensure the child’s regular school attendance and to make reasonable efforts to obtain educational services necessary to meet the specific needs of the child.”

entitled to reunification services under section 362 unless there was a finding that he had committed serious physical abuse of the child. The court rejected his claim, holding that no reunification services were required because the child had not been removed from the custodial parent. (*Id.* at p. 145.)

In this case, Father is claiming a right to visitation, which is an “example of a reunification service.” (*In re Calvin P.* (2009) 178 Cal.App.4th 958, 963.) Since the children were not removed from the custodial parent, the juvenile court was not required to order any reunification services for Father. (*A.L., supra*, 188 Cal.App.4th at p. 145.) Thus, it was not required to order that Father have visitation.

Father relies on cases in which a parent was receiving reunification services, but no visitation. “[W]hen reunification services have been ordered and are still being provided, ... some visitation is mandatory unless the court specifically finds any visitation with the parent would pose a threat to the child’s safety.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1491, italics & fn. omitted; see also *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426; *In re Mark L.* (2001) 94 Cal.App.4th 573, 581.) Here, the juvenile court was not required to order reunification services because the children were not removed from the custodial parent. (*A.L., supra*, 188 Cal.App.4th at p. 145.) Thus, contrary to Father’s claim, the court could deny him visitation without making a finding that visitation would be detrimental to the children.

Father further claims that, as a result of the juvenile court’s failure to make a visitation order, the decision whether to allow him any visitation was improperly delegated to Mother and/or the Department. However, the cases that he relies on are inapposite because they involved statutes that required the court to make a visitation order. For instance, in *In re Kristin W.* (1990) 222 Cal.App.3d 234, the trial court placed the children in foster care and ordered reunification services for the father pursuant to section 362.1, but it did not order visitation as required by that statute. Since the statute required that the court make a visitation order, the lack of a visitation order was

erroneous and “akin to an order granting total discretion” to the social worker. (*Id.* at p. 256.) Likewise, in *In re Randalynne G.* (2002) 97 Cal.App.4th 1156, the juvenile court was required to make a visitation order pursuant to former section 366.26 because it had appointed a legal guardian for the dependent child, and it could not delegate the visitation issue to the guardian. (*Id.* at p. 1165.)

This case is governed by section 362, not by a statute requiring the court to make a visitation order. Therefore, the trial court’s failure to make a visitation order for Father does not amount to an improper delegation of authority.

Father also cites *In re Chantal S.* (1996) 13 Cal.4th 196 (*Chantal S.*), but that case does not support his position. In *Chantal S.*, the court rejected the father’s claim that a visitation order improperly delegated judicial authority to two therapists. That case was governed by section 362.4, which permits the juvenile court to make a visitation order when terminating a dependency proceeding. The court found that the juvenile court could have denied the father visitation entirely, and that he had received a “windfall” via the visitation order. (*Id.* at p. 214.) Further, since the dependency jurisdiction had been terminated, the father could raise the claim in family court.

Here, as in *Chantal S.*, the juvenile court had discretion to deny Father visitation entirely, and Father is not precluded from seeking a visitation order in future proceedings. As the juvenile court noted, Father may be assessed for visitation or other services “should he come forward.” Father may also request a visitation order by filing a petition to modify the juvenile court’s order. (§ 388; see *In re Hirenia C.* (1993) 18 Cal.App.4th 504, 512.)

In sum, we conclude the juvenile court did not err by failing to make a visitation order for Father at the May 17, 2012 hearing.

B. ICWA Notice

Father contends the Department did not provide the Indian tribes with sufficient notice under the ICWA. Father argues that the juvenile court failed to make any finding

about the sufficiency of the ICWA notice, and that any implied finding was not supported by substantial evidence.

1. Legal Principles

“Under the ICWA, where a State court ‘knows or has reason to know’ that an Indian child is involved, statutorily prescribed notice must be given to any tribe with which the child has, or is eligible to have, an affiliation. (25 U.S.C. § 1912(a).)” (*In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1264.)

“The notice required by the ICWA must contain enough information to provide meaningful notice. [Citation.] The federal regulations require the ICWA notice to include, *if known*, ‘(1) the name, birthplace, and birth date of the Indian child; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child’s parents, grandparents, great-grandparents and other identifying information; and (4) a copy of the dependency petition.’ ” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1529 (*I.W.*), italics added.)

The juvenile court and the agency that filed the dependency petition both “have an affirmative and continuing duty to inquire” about the child’s Indian heritage.

(Rule 5.481(a).) When a social worker has reason to know that the child may be an Indian child, he or she must make further inquiry, by interviewing the parents and extended family members, in order to complete the required notices.

(Rule 5.481(a)(4)(A); see *In re A.G.* (2012) 204 Cal.App.4th 1390, 1396 (*A.G.*).

However, the Department is only required to make reasonable efforts to obtain information about the child’s family history. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 198-199 [agency is not required to “cast about” for additional information when the record contains only “rather vague information provided by family members”].)

“The juvenile court must determine whether proper notice was given under the ICWA and whether the ICWA applies to the proceedings. [Citation.]” (*I.W., supra*, 180 Cal.App.4th at p. 1530.) “While the record must reflect that the court considered the

issue and decided whether ICWA applies, its finding may be either express or implied. [Citations.]” (*In re Asia L.* (2003) 107 Cal.App.4th 498, 506 (*Asia L.*)). The appellate court reviews the juvenile court’s findings for substantial evidence. (*I.W., supra*, at p. 1530.)

2. The Juvenile Court Found that the ICWA Notice was Adequate

Father contends that the juvenile court never made a finding whether or not the Department had given proper ICWA notice.

Father notes that at the April 24, 2012 hearing, the juvenile court indicated it was making “no finding at this time.” However, this remark did not refer to the issue of whether adequate notice had been given under the ICWA. The juvenile court was referring to the ultimate issue of whether the ICWA applied. The juvenile court indicated it was not making a finding on that issue at that time because it was waiting for further information from Father and/or further responses from the tribes.

The juvenile court did make several express findings concerning whether the Department had given proper notice under the ICWA. First, at the April 24, 2012 hearing, the court specifically found that the Department had “sent notice to the [Bureau] and eight Apache tribes,” and that all parties except for one of the tribes had “received proper notice of today’s hearing.” (See *ante*, fn. 2.) The juvenile court’s subsequent jurisdictional orders state that “Notice of hearing and a copy of the Petition have been given as required by law,” and its dispositional orders state that “Notice of hearing was given as required by law.”

Even if the juvenile court failed to expressly find that the ICWA notice was adequate, such a finding is implied on this record. (See *Asia L., supra*, 107 Cal.App.4th at p. 506.) The issue of ICWA notice was discussed at the April 24, 2012 hearing. At the May 17, 2012 hearing, no further information was submitted and the juvenile court proceeded to disposition. Under the circumstances, where the record shows that the juvenile court “considered the issue,” there was an implied finding that the ICWA notice

was adequate. (*Ibid.*; compare *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 698, 704-705.)

3. Substantial Evidence Supports the Finding of Adequate Notice

Father contends the ICWA notice was inadequate because the children's extended family history information was marked as unknown. Father relies on three cases, each of which involved omission of information that was either known or available to the agency.

Much of the family history section was left blank or reported as unknown in *In re Francisco W.* (2006) 139 Cal.App.4th 695, where the paternal grandmother had reported Cherokee heritage. Despite the fact that the paternal grandmother "had made herself available," information about the paternal grandparents' birthdates and birth places had been omitted from the ICWA notices. (*Id.* at p. 700.) The ICWA notices were inadequate, since the agency "easily could have contacted the paternal grandmother for additional pertinent information." (*Id.* at p. 704, fn. omitted.)

Similarly, in *A.G., supra*, 204 Cal.App.4th 1390, the agency sent ICWA notices that contained no information about any members of the child's family other than his mother and father, who had reported Creek heritage. Several of the father's family members had been "involved in the proceedings and/or in contact with the Agency," but the notices omitted their identifying information. (*Id.* at p. 1397.) The record also contained "no indication" that the agency had followed up with the father or his family members. (*Ibid.*) Thus, the ICWA notices were inadequate.

Available information about the children's extended family was likewise omitted from the ICWA notices in *In re D.T.* (2003) 113 Cal.App.4th 1449. The notices "failed to include information already known to the social worker, such as [the mother's] married name, the parents' current addresses, the names of the minors' grandparents, and that the claimed tribal affiliation was Cherokee." (*Id.* at p. 1455.) Further, the social worker had not specifically asked the father for information about his family heritage. Thus, "the notice provided was insufficient." (*Ibid.*)

In this case, information about Father’s extended family was neither known nor available to the juvenile court or the Department. The social worker had attempted to reach Father, who was the only possible source of further information. However, Father was voluntarily absent from many of the proceedings, had not kept in contact with his attorney or the social worker, and did not provide any further information about his heritage despite promising to do so. (See *In re S.B.* (2005) 130 Cal.App.4th 1148, 1160 [“While the social worker and the trial court have a duty to inquire into the child’s Indian ancestry, a parent has superior access to this information”].) Under the circumstances, substantial evidence supports the juvenile court’s finding that the ICWA notice was adequate.

4. Any Error Was Harmless

Even if we were to conclude that the ICWA notice was inadequate, any error is harmless for two reasons.

First, unlike in the cases discussed above, where family members were available to provide further information, here it would be speculative to conclude that any additional efforts by the social worker would have produced any more information about the children’s paternal extended family. (See *In re Miracle M.* (2008) 160 Cal.App.4th 834, 847 [any defect in ICWA notice was harmless where mother failed to demonstrate how reversal “would produce any additional information that this child is an Indian child”].) As noted, Father was the only possible source of further information, but he had failed to produce any additional details.

Second, any error was harmless because the Department never sought to remove the children from Mother’s custody. (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 (*Alexis H.*)) “By its own terms, the [Indian Child Welfare] [A]ct requires notice only when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding.” (*Id.* at p. 14.) “When authorities

remove a child of Native American descent from his home, the act promotes foster care or adoption by a Native American family in the hope of preserving tribal culture. If, however, authorities do not move the child to another family, the purpose does not come into play.” (*Id.* at p. 15.)

In *Alexis H.*, the children were placed with their mother, who was ordered to receive family maintenance services. (*Alexis H., supra*, 132 Cal.App.4th at p. 14.) The Department had not pursued foster care or adoption, “instead recommending from the beginning that the children remain with their mother.” (*Id.* at p. 16.) The appellate court concluded that even if the ICWA notice requirements applied under such circumstances, the error was harmless. (*Ibid.*)

Here, too, any defect in the ICWA notice was harmless because the children were not removed from Mother’s custody and the Department had never recommended an out-of-home placement. (*Alexis H., supra*, 132 Cal.App.4th at p. 16.) However, if the Department “ever contemplates any additional action which might lead to foster care or adoption, it [must] ensure that the notices sent to the tribes contain complete and accurate information” (*Ibid.*)

DISPOSITION

The dispositional orders filed May 18, 2012 are affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.