

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
SIXTH APPELLATE DISTRICT

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

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

Plaintiff and Respondent,

v.

N.H.,

Defendant and Appellant.

H041837
(Santa Clara County
Super. Ct. Nos. 101JD12401,
104JD15214, 111JD20563,
111JD20565, 111JD20566,
111JD20807)

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

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

Plaintiff and Respondent,

v.

N.H.,

Defendant and Appellant.

H041885
(Santa Clara County
Super. Ct. No. 111JD20564)

In re E.A., a Person Coming Under the
Juvenile Court Law.

H041886
(Santa Clara County
Super. Ct. No. 113JD21969)

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

Plaintiff and Respondent,

v.

N.H.,

Defendant and Appellant.

Appellant N.H. (the mother) appeals from juvenile court orders terminating her parental rights to eight of her children. She contends that the orders must be reversed because the trial court erroneously found that the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (the ICWA) did not apply.¹ She claims that the ICWA notices were inadequate because they did not provide information about her non-Indian grandmothers and the Department failed to obtain additional information from her grandmothers. We find no cause for reversal and affirm the orders.

I. Background

A.A. is the eldest child of the mother and the father. She was born prematurely in 2001, and both the mother and A.A. tested positive for methamphetamine at the time of A.A.'s birth. The Department detained A.A. at the hospital, and it filed a Welfare and

¹ We consider the mother's three appeals together. H041837 concerns six of her children. H041885 and H041886 each concern another of her children. Her ninth child is not at issue in any of these appeals.

Institutions Code section 300² petition seeking jurisdiction over A.A. The father had a criminal history of domestic violence and had repeatedly battered the mother. The court took jurisdiction over A.A. and removed her from parental custody, but A.A. was later returned to the mother's custody with family maintenance services. After a year, the court terminated the dependency case with a family court order barring the father from visiting A.A.

At the time of the 2001 dependency case, the father denied having any Indian heritage. The mother told the social worker that "her grandfathers, Charles G[.] and George H[.], were registered with the California coastal band of Chumash Indians and the Lakota Sioux in South Dakota." The mother believed that George, her paternal grandfather, "once resided on a reservation in South Dakota."

The social worker contacted "maternal Grandmother [mother's mother], Dorinda H[.]" and learned that Charles was deceased and "did not officially register with the Chumash band." Dorinda did not know of any family members who were "registered with the Chumash." The social worker determined that the "Coastal Band of Chumash Indians" was not a federally recognized Indian tribe. The social worker also spoke with Sandra H[.], George's ex-wife, and learned that George "possibly was registered with the Lakota Sioux." Multiple attempts to contact George were unsuccessful. The mother had a poor relationship with her parents, Michael H. and Dorinda H. The social worker sent ICWA notices to Bureau of Indian Affairs (BIA) offices in Sacramento and South Dakota, but the record does not include these notices or indicate what information they contained.

In 2004, the Department detained A.A. and her one-year-old brother O.A. and filed a petition seeking jurisdiction over them after the mother neglected the children's safety so that she could use methamphetamine. The court took jurisdiction over the

² Subsequent statutory references are to the Welfare and Institutions Code.

children and removed them from parental custody. In March 2005, the court returned the children to the mother's custody with family maintenance services. In February 2006, the court dismissed the dependency with a family court order granting the mother sole legal and physical custody.

At the time of the 2004 dependency, the mother's mother told the Department that the mother's father, Michael H., was a registered member of the Crow Creek Sioux tribe in South Dakota, and his enrollment number was U001622. The Department sent ICWA notices to the Sacramento BIA office and the Crow Creek Sioux tribe in South Dakota. The notices identified the mother's parents and provided an enrollment number for Michael H. but did not provide any information about the mother's grandparents. The Crow Creek Sioux tribe responded that the children were "not eligible for enrollment" because the mother was "not enrolled and the maternal grandfather's blood quantum of 7/16 is not enough for mother to be eligible" for enrollment. The court found that the ICWA did not apply.

In 2011, the Department filed petitions seeking jurisdiction over A.A., O.A., and their four younger siblings.³ The children were not detained, and the petitions were dismissed without prejudice after the parents agreed to informal supervision. However, just a couple of months later, the Department detained the six children and again filed petitions as to them. The three-year-old child had been found wandering alone in the street, and the parents' home was "unsanitary and hazardous to the children's health and safety." In September 2011, shortly after the six children were detained, the mother gave birth to a seventh child, and the Department filed a petition as to the seventh child but did not detain her.⁴ The court took jurisdiction over all seven children but did not remove

³ Three of the four younger children also have the initials A.A.

⁴ The seventh child's initials are also A.A.

them from the mother's custody. The children were placed in the mother's custody with family maintenance services.

At the time of the 2011 dependency cases, the mother told the Department that she had Indian ancestry of "Sioux tribe Lacota [*sic*]," "Dakota and Chumash," and "Chumash and Lakota-Sioux." She asserted that her mother was "Chumash Indian" and her father was "Sioux Indian." In May 2011, before the first set of 2011 petitions was dismissed, the Department sent ICWA notices to the Crow Creek Sioux tribe and the Santa Ynez Band of Chumash Mission Indians.⁵ These notices provided names, birthdates, and birthplaces of the mother's parents and her father's Crow Creek Sioux tribe enrollment number. These notices also included the name, birthdate, and birthplace of one of the mother's grandmothers and the name and birthplace of the mother's other grandmother. They also included the name, birth year, and birthplace of one of the mother's grandfathers (Charles G.) and the name and birthplace of her other grandfather (George H.).

After the second set of 2011 petitions was filed, the Department sent another set of ICWA notices. These notices were sent to the Crow Creek Sioux tribe, two other Sioux tribes, the Santa Ynez Band of Chumash Mission Indians, and the BIA. These notices provided names, birthdates, and birthplaces of the mother's parents and her father's Crow Creek Sioux tribe enrollment number. The notices also included the names, birth years, and birthplaces of the mother's grandfathers, but no information about her grandmothers. All of the tribes responded to the second set of 2011 notices and stated that the children were not eligible for enrollment. The mother told the social worker in 2012 that "she does not have any additional information, nor access to any family members that could provide more information, about her family's American Indian ancestry."

⁵ The Santa Ynez Band is the only federally recognized Chumash tribe.

In September 2012, the Department sent another set of ICWA notices to the same three Sioux tribes, the Santa Ynez Band of Chumash Mission Indians, and the rest of the federally recognized Sioux tribes. These notices provided names, birthdates, and birthplaces of the mother's parents and her father's Crow Creek Sioux tribe enrollment number. The notices also included the names, birth years, and birthplaces of the mother's grandfathers, but no information about her grandmothers. The tribes responded that the children were not enrolled or eligible for enrollment.

In July 2013, the mother gave birth to her eighth child.⁶ The child tested positive at birth for methamphetamine, and she was placed in protective custody. The Department detained the other seven children, and it filed supplemental petitions as to them and a petition seeking jurisdiction over the eighth child. The mother had already received 18 months of family maintenance services for the seven older children. The court sustained the petitions. In August 2013, the court removed the seven older children from parental custody, removed the eighth child from parental custody, and granted the mother reunification services as to the eighth child.

In July 2013, the Department sent another set of ICWA notices, this time for the eighth child. These notices were sent to all of the previously noticed tribes and contained the same information as the 2012 notices. The tribes responded that the eighth child was not eligible for enrollment. In August 2013, the court found that the ICWA did not apply to the seven older children and that proper ICWA notices had been given for the eighth child.

In May 2014, the court terminated services and set section 366.26 hearings for seven of the eight children. The court also found that the ICWA did not apply as to the

⁶ The sixth child has the same initials (E.A.) as the eighth child.

eighth child. In August 2014, the court terminated services as to the remaining child and set a section 366.26 hearing.⁷

In October 2014, the court terminated parental rights as to six of the children. In November 2014, the court terminated parental rights as to the eighth child. In December 2014, the court terminated parental rights as to the remaining child. The mother timely filed notices of appeal from the October, November, and December 2014 orders.

II. Discussion

The sole contention on appeal is that the second set of 2011 ICWA notices and the 2012 and 2013 ICWA notices were inadequate because they omitted information about the mother's grandmothers and did not include additional information that could have been acquired from them.

“The ICWA provides that, ‘[i]n any involuntary proceeding in a State court, where the court *knows or has reason to know* that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.’ (25 U.S.C. § 1912(a), italics added.) California law implements the ICWA by requiring that notice be sent to the minor’s parents and the minor’s tribe whenever ‘it is *known or there is reason to know* that an Indian child is involved [in a Indian child custody proceeding], and for every hearing thereafter . . . unless it is determined that the Indian

⁷

In September 2014, the mother gave birth to her ninth child. Both she and the child tested positive for methamphetamine at the time of the birth. This child was immediately taken into protective custody, and the court took jurisdiction over him in October 2014, removed him from parental custody, denied the parents reunification services, and set a section 366.26 hearing for February 2015. The mother’s ninth child is not at issue in the three appeals now before us.

Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) does not apply to the case in accordance with Section 224.3.’ [fn. omitted] (§ 224.2, subs. (a), (b), italics added; see § 224.1, subd. (c); 25 U.S.C. § 1903; rules 5.480, 5.481(b).) Notice must ‘be sent to all tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child’s tribe in accordance with subdivision (d) of Section 224.1, after which notice need only be sent to the tribe determined to be the Indian child’s tribe.’ [fn. omitted] (§ 224.2, subd. (a)(3).) [¶] Under the implementing federal regulation, the required ICWA notices must include ‘[a]ll names known, and current and former addresses of the Indian child’s biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or *other identifying information.*’ (25 C.F.R., § 23.11(a), (d)(3) (2010), italics added.) California law requires that the notices contain substantially the same data, including ‘*any other identifying information, if known.*’ (§ 224.2, subd. (a)(5)(C), italics added.)” (*In re C.B.* (2010) 190 Cal.App.4th 102, 139-140.)

“Notice is meaningless if no information or insufficient information is presented to the tribe.” (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1116 (*S.M.*.) Where the notice fails to include information on the person who is alleged to be the source of Indian heritage, the notice is inadequate because “the tribes could not conduct a meaningful search with the information provided.” (*S.M.*, at pp. 1116-1117.)

The 2001 notices do not appear in the record. The 2004 notices were sent to only the Crow Creek Sioux tribe and the BIA and did not contain any information about the mother’s grandparents. The first set of 2011 notices was sent to the Crow Creek Sioux tribe and the Santa Ynez Band of Chumash Mission Indians and included all of the known information about the mother’s grandmothers and grandfathers. However, the record does not contain responses to these notices, and these notices were not sent to the

rest of the Sioux tribes.⁸ The second set of 2011 notices was sent to the Crow Creek and Santa Ynez tribes, to two additional Sioux tribes, and the BIA. These notices *omitted* the information about the mother's grandmothers that had been included in the first set of 2011 notices. All of the tribes responded to the second set of 2011 notices that the children were not eligible for enrollment. The 2012 and 2013 notices contained the same information as the second set of 2011 notices and were sent to those same tribes plus the rest of the Sioux tribes. The tribes responded that the children were not eligible for enrollment.

The mother points out that the Department "had the names and partial addresses for both of mother's grandmothers, and a birth date for mother's maternal grandmother" because it included that information in the first set of 2011 notices, yet the Department failed to include that information in the second set of 2011 notices or in the 2012 or 2013 notices. As a result, the information about the mother's grandmothers was never sent to the additional Sioux tribes that received only those later notices. She also argues that the Department was remiss in failing to obtain "family history information accessible through mother's grandmothers." The mother contends that her grandmothers were in contact with the Department in 2001 and could have provided additional information about their parents and in-laws.

The mother relies on *In re Francisco W.* (2006) 139 Cal.App.4th 695 (*Francisco*) and *S.M.* to support her claim that the ICWA notices were inadequate due to their omission of information about her grandmothers.

⁸ The Department has filed a motion asking us to take additional evidence on appeal. The additional evidence is letters from the Department's files showing that the Crow Creek and Santa Ynez tribes responded to the first set of 2011 notices and stated the children were not eligible for enrollment. The mother opposes the motion. We deny the motion because these documents are not necessary to our analysis.

In *Francisco*, the father informed the Agency that he “possibly had Cherokee heritage,” and the father’s mother told the social worker that she had Cherokee Indian heritage. (*Francisco, supra*, 139 Cal.App.4th at pp. 699-700.) Notices were sent to Cherokee tribes, but information about the father’s mother was not included. (*Francisco*, at p. 700.) Subsequent notices identified the father’s father and asserted that he had Cherokee heritage but provided neither his birthdate nor birthplace. (*Francisco*, at p. 700.) The trial court found that the notices were adequate, but the Agency conceded on appeal that the notices were inadequate. The Court of Appeal agreed. “It is essential to provide the Indian tribe with all available information about the child’s ancestors, especially the one with the alleged Indian heritage.” (*Francisco*, at p. 703.)

In *S.M.*, the father’s mother told the Agency that there was “Cherokee blood, on my mother’s side.” (*S.M., supra*, 118 Cal.App.4th at p. 1113.) The father told the Agency that his deceased grandmother might have been registered with a Cherokee tribe. (*S.M.*, at p. 1113.) The Agency sent notices to the Cherokee tribes, but the notices included no information about the father’s mother or his deceased grandmother. (*S.M.*, at pp. 1115-1116.) The Agency subsequently sent notices that provided more information, but it did not respond to requests from the tribes for additional information. (*S.M.*, at pp. 1114, 1116-1118.) The Court of Appeal found that the initial notices were inadequate and that the subsequent notices did not cure the initial inadequacies because the Agency failed to respond to the tribes’ requests for more information. (*S.M.*, at pp. 1116-1118.)

Francisco and *S.M.* are plainly distinguishable from the case before us. Unlike in *Francisco*, where the omitted information was relevant to the child’s Indian ancestor, in this case the mother did not assert that either of her grandmothers had any Indian heritage. Her only claims to Indian heritage were based on her grandfathers’ Indian heritage. The inadequacies in the notices in *S.M.* also concerned the child’s ancestors with Indian heritage. In addition, in *S.M.* the Agency was unresponsive to the requests from the tribes for additional information. Here, the omissions from the notices did not

concern any of the child's ancestors with Indian heritage, and none of the tribes requested additional information. The mother makes no showing that the omission of information about her non-Indian ancestors from the ICWA notices could in any way have prejudiced the tribes' ability to determine whether the children were eligible for enrollment. Hence, this omission was a harmless error that does not invalidate the notices. (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1414.)

We also reject the mother's contention that the notices were inadequate because the Department failed to obtain additional information from the grandmothers. It would be pure speculation to assume that the grandmothers had any additional information about the children's Indian ancestors, particularly since one grandfather was deceased, the other's whereabouts were unknown, and the mother explicitly told the Department that she had no further information or access to any source of information about her Indian ancestors.

III. Disposition

The orders are affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

In re A.A., et al
H041837

In re A.A.
H041885

In re E.A.
H041886