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

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

H042411
(Santa Clara County
Super. Ct. No. 1-10-JD20255)

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

Plaintiff and Respondent,

v.

J.B. et al.,

Defendants and Appellants.

J.D. is a minor dependent of the juvenile court. His Mother, J.B., and his Father, R.E., appeal from orders for jurisdiction and disposition pursuant to Welfare and Institutions Code, section 300, subdivisions (b) and (c).¹ On appeal, they both assert that the notice to the Indian tribes regarding J.D.'s Indian heritage was insufficient under the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.)

¹ All further unspecified statutory references are to the Welfare and Institutions code.

STATEMENT OF THE FACTS AND CASE

This dependency case originates in Calaveras County. On October 23, 2009, the Calaveras Works and Human Services Agency filed a dependency petition pursuant to section 300, subdivision (b), alleging J.D., who was 10 months old at the time, and his sister, who was six-years-old at the time, were at substantial risk of suffering serious physical harm due to Mother and Father's inability to supervise or protect them adequately or to provide regular care due to substance abuse. The court sustained the petitions and limited Father's contact with J.D. to supervised visitation. Both children were returned to Mother, and Father visited with them weekly.

In June 2010, the court ordered continued family maintenance services for Mother but terminated reunification services for Father because of lack of progress with his case plan.

With regard to Indian heritage, Mother stated that she may have Apache, Cherokee, Navajo, Pueblo, Ute and Yuki American Indian heritage. On October 28, 2009, the Calaveras County Child Protective Services sent notices to 18 tribes pursuant to the ICWA. The notice included complete information for Mother and Father, only the names and place of birth of the paternal and maternal grandparents, and no other information. The Calaveras County Dependency Court made no finding regarding ICWA applicability, because the children were never removed from Mother's home.

In 2010, Mother and her children moved to Santa Clara County. On July 9, 2010, Calaveras County filed a request to transfer the case to Santa Clara County. Mother told a Santa Clara County social worker that she was living with her aunt and had no contact with Father.

By February 17, 2015, Father was on probation in four Santa Clara County cases, including two drug cases. San Jose Police found Mother and Father pushing two shopping carts down the sidewalk. When police approached, J.D. came out from one of

the carts. Both parents appeared to be under the influence of methamphetamine and admitted to recent use. Mother and Father said that they had been staying at a Motel 6, but were out of funds and slept the prior night behind a Burger King. Both were arrested.

A police officer spoke with J.D. At first, J.D. was aggressive and did not want to speak with the officer. Eventually, J.D. said that he had last eaten the night before, did not shower or take baths and was not in school because “those kids are all better than me.” Mother’s older sister said Mother and Father had been unstable and homeless for many years. Mother’s daughter had moved in with Mother’s sister about three years before. Child Protective Services came and took custody of J.D.

On February 19, 2015, the Santa Clara County Department of Family and Children’s Services (Department) filed dependency petitions pursuant to section 300, subdivision (b), alleging J.D. and his sister were at substantial risk of suffering serious physical harm due to the parents’ inability to supervise or protect them adequately or to provide regular care due to substance abuse. The court ordered the children temporarily removed from the physical custody of Mother and Father.

On February 27, 2015, the Department sent a new notice to Indian tribes in this case, because the Calaveras County Dependency Court made no finding concerning ICWA applicability. The new notice contained the same information as the notice sent in 2009, however, this time, notice was sent to 37 tribes, rather than 18. The notice included complete information about Mother and Father, the names and place of birth of the paternal and maternal grandparents, and no other information. The social worker reported that she sent notice to the Bureau of Indian Affairs and the Department of the Interior with regard to Father’s reported possible Indian heritage, but did not specify specific tribes. The social worker also reported that neither parent had any new information to include in the notice. There was no evidence that the Department had engaged in any efforts to obtain additional information concerning Mother’s heritage from family members who lived in Santa Clara County.

On April 29, 2015, Father waived his right to contest the section 300 petition and submitted it for decision based on the social worker's report. On May 11, 2015, the Department filed a jurisdiction report prepared on March 10, 2015. On May 11, 2015, the Department filed a disposition report prepared on March 23, 2015. In both reports, the Department recommended services for father be bypassed pursuant to section 361.5, subdivision (b)(13), due to Father's chronic substance abuse.

On May 26, 2015, the court found the petition to be true. The court ordered J.D. removed from Mother and Father's physical custody.

Mother and Father filed timely notices of appeal.

DISCUSSION

Mother and Father assert that lack of compliance with ICWA inquiry and noticing requirements mandates reversal in this case. They argue that the notices sent to the Indian tribes did not contain available pertinent information, and that the record fails to show that the Department complied with its mandatory duty to investigate and to provide all available information concerning J.D.'s Indian ancestry.

“ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. [Citations.] If there is reason to believe a child that is the subject of a dependency proceeding is an Indian child, ICWA requires that the child's Indian tribe be notified of the proceeding and its right to intervene. [Citations.]” (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1396.) The court and the social services agency have “reason to know” that a child may be an Indian child if anyone having an interest in the child provides information suggesting that the child is a member of a tribe or eligible for membership in a tribe. (§ 224.3, subd. (b)(1).)

“ ‘Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian

custodian or state agencies. Specifically, the tribe has the right to obtain jurisdiction over the proceedings by transfer to the tribal court or may intervene in the state court proceedings. Without notice, these important rights granted by [ICWA] would become meaningless.’ [Citation.]” (*In re A.G.*, *supra*, 204 Cal.App.4th at p. 1396.)

“Accordingly, federal and state law require that the notice sent to the potentially concerned tribes include ‘available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.’ [Citations.] To fulfill its responsibility, the Agency has an affirmative and continuing duty to inquire about, and if possible obtain, this information. [Citations.] Thus, a social worker who knows or has reason to know the child is Indian ‘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 in paragraph (5) of subdivision (a) of Section 224.2’ (§ 224.3, subd. (c).) That information ‘shall include’ ‘[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.’ (§ 224.2, subd. (a)(5)(C).)” (*In re A.G.*, at pp. 1396-1397.)

Because of their critical importance, ICWA’s notice requirements are strictly construed. (*In re A.G.*, *supra*, 204 Cal.App.4th at p. 1397.) If the record reflects that the social services agency failed to inquire of the parent or available relatives to obtain as much information as possible, a reviewing court may reverse the order terminating parental rights and direct the trial court to order the social services agency to comply with its duties of inquiry and notice under ICWA. (*Id.* at pp. 1393-1394, 1397.)

In *A.G.*, the child welfare agency omitted much of the same information from the notice form as omitted by the Department here, without any explanation in the record for the omissions or description of the efforts made to secure the necessary information. (*A.G.*, *supra*, 204 Cal.App.4th at pp. 1394, 1397.) The court concluded “[e]rror is obvious” and issued a limited remand for ICWA compliance. (*Id.* at pp. 1397, 1402; see *In re Francisco W.* (2006) 139 Cal.App.4th 695, 705–706, 708 [explaining purpose of limited reversal].)

Here, the notice from the Department contained complete information about Mother and Father, and the names and places of birth of the maternal and paternal grandparents. However, the Department had not done any additional investigation to determine identifying and contact information about other relatives. This was despite the fact that two of Mother’s relatives, including her sister, Jamie Gonzales, who was caring for Mother’s older daughter and was involved with the dependency since its inception, lives in Santa Clara County. In addition, Mother provided information to the Department that she lived with her aunt when she first relocated from Calaveras County, and that her aunt continued to live in Santa Clara County.

The Department failed to fully investigate all available sources of information in this case to provide adequate notice to Indian tribes pursuant to ICWA. As such, the case must be remanded for the Department to comply with ICWA and conduct a proper inquiry, including seeking information from Mother’s relatives living in Santa Clara County, of J.D.’s potential Indian heritage. Additional information may or may not exist, but the record suggests that inquiry would have been likely to produce some additional information which should be provided to the relevant tribes.

DISPOSITION

The jurisdiction and disposition order dated May 26, 2015 is reversed. The juvenile court is directed to order Department to investigate and obtain complete information from Mother’s relatives who reside in Santa Clara County. If, after new

notice, any of the tribes claim J.D. is eligible for membership and seek to intervene, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, the tribes make no such claim following new notice or the court concludes Department's efforts at compliance were adequate and no further information about Mother's family is reasonably available, the May 26, 2015 order shall be reinstated.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

MÁRQUEZ, J.