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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re T.D., A Person Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.D., Defendant and Appellant.	B304153 (Los Angeles County Super. Ct. No. DK23081B)
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APPEAL from an order of the Superior Court of Los Angeles County. Sabina A. Helton, Judge. Affirmed.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Navid Nakhjavani, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from an order terminating her parental rights to her two-year-old son. The sole issue on appeal is whether the Department of Children and Family Services (Department) failed to comply with the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901, et seq.).

Mother informed the Department that son may have Indian ancestry through the Shoshone or Choctaw tribes. Although she subsequently retracted that statement, maternal grandfather told the juvenile court he had “anecdotal” information of an early 19th century relative who was Indian. The Department sent ICWA notices to the Shoshone and Choctaw tribes; however, the notices only identified son’s older sister as the subject of dependency proceedings and omitted son’s name and birthdate. The notified tribes concluded older sister was not a member or eligible for membership in their tribes. The juvenile court, in turn, found that ICWA was not applicable.

Mother now argues the court erred in finding ICWA did not apply to son despite the absence of proper notice to the tribes. She also contends the Department erred in not conducting a further inquiry into her Indian ancestry. The Department argues it was not required to notice the tribes because (1) there was no reason to believe son was an Indian child such that ICWA notice was required, and (2) the tribes found older sister not a member and it followed that son was also not a member. (The siblings shared the same maternal ancestry and there is no claim of Indian heritage through father.) The Department also contends that ICWA did not require it to conduct additional inquiry.

We agree with the Department that no notice was required under ICWA even though notices were given. We also conclude that because notice was not required in the first instance, any

defect in the notices actually sent was of no legal consequence. Finally, we conclude the Department did not err in not conducting further investigation in son's Indian ancestry. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2017, the Department received a referral when son tested positive for methamphetamine at birth. The Department filed a petition alleging mother's substance abuse rendered her incapable of caring for son and his three-year-old sister.¹ Older sister was living with maternal grandfather in Texas at the time of son's birth, and would eventually be dismissed from the petition as the Texas authorities had filed a petition on her behalf.

On an ICWA I-20 Form that she filed with the court, mother checked the box that she may have Native American ancestry and identified the Shoshone or Choctaw tribes. The court ordered the Department to follow up on this information. The Department complied, and mother told the Department on two separate occasions she did not have any Native American ancestry.

At a hearing in July 2017, mother's counsel confirmed that mother did not believe she had any Native American ancestry. Maternal grandfather was present, and the court asked him about the family's Native American ancestry. Maternal grandfather said he only had "anecdotal" information that in 1827, one of his ancestors was married to a Native American woman. Based on this information, the juvenile court directed

¹ Father's whereabouts were unknown. There was no claim of Native American ancestry through father's family.

the Department to provide ICWA notice to the Shoshone and Choctaw tribes.

The Department mailed notices to the Shoshone and Choctaw tribes, and the tribes responded that ICWA did not apply. There was one problem: the attached notices showed the Department had provided the tribes with the name and date of birth of older sister; son's name and date of birth were omitted. The Department filed the tribes' responses and informed the court that "ICWA does not apply." Neither the parties nor the juvenile court apparently noticed the omission of son's name and birthdate. The court found there was no reason to know that ICWA applied to older sister or son.

Mother pled no contest to the petition's allegations. In January 2018, the juvenile court sustained the petition, and removed son from mother's custody. Eight months later, in August 2018, the court terminated mother's reunification services, and set a date for a permanency planning hearing.

After several continuations, the section 366.26 hearing took place in January 2020. The juvenile court terminated mother's parental rights over son, now two years old, and designated his foster parents as his prospective adoptive parents. Mother timely appealed.

DISCUSSION

1. *ICWA Overview*

ICWA's purpose is to "protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family." (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783.) Under ICWA, an "Indian child" is a child who is either a member of a

federally recognized Indian tribe or the biological child of a member and eligible for membership in that tribe. (*Ibid.*)

“[T]he juvenile court has a continuing duty to conduct an inquiry when it has received information that a dependent child might be an Indian child, as defined by ICWA, and to provide notice to any relevant tribe. This duty arises both under ICWA itself and under California’s parallel statutes, Welfare and Institutions Code section 224 et seq. [Citation.] The purpose of both statutory schemes is to ‘enable[] a tribe to determine whether the child [who is the subject of involuntary proceedings in a state court] is an Indian child and, if so whether to intervene in or exercise jurisdiction over the proceeding.’ [Citation.]” (*In re K.R.* (2018) 20 Cal.App.5th 701, 706.)

The Department’s initial duty of inquiry includes asking the child, parents, and extended family members whether the child may be an Indian child. (Welf. & Inst., § 224.2, subd. (b).)² A duty of further inquiry is imposed when the Department or court has “reason to believe” an Indian child is involved in the proceedings. (§ 224.2, subd. (e).)

ICWA’s notice requirements are triggered when a court has determined there is “reason to know” the child may be an Indian child. (§ 224.2, subd. (d)(4).) When ICWA notice is required, the notice must contain enough information to allow the tribe to “conduct a meaningful review of its records to determine the child’s eligibility for membership.” (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) An ICWA notice must contain “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, . . . as well as their

² All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.” (§ 224.3, subd. (a)(5)(C); see former § 224.2, subd. (a)(5)(C).) Information about relatives more remote than great-grandparents is generally not required. (*In re J.M.* (2012) 206 Cal.App.4th 375, 381.)

“The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.]’ [Citation.]” (*In re A.M.* (2020) 47 Cal.App.5th 303, 314.) We review the Department’s compliance with ICWA and the juvenile court’s ICWA findings for substantial evidence. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430.) We review the court’s conclusion that the requirements of ICWA have been satisfied de novo when the facts are undisputed. (*A.M.*, at p. 314.)³

2. Duty of Inquiry

Mother first argues the Department’s inquiry into her Indian ancestry was inadequate. In her view, the Department should have interviewed additional maternal relatives and inquired why she retracted her statement of Indian ancestry. She contends there was insufficient evidence the Department had conducted a proper investigation that could “provide the tribes sufficient information so that they could conduct a meaningful review of their records to determine eligibility.”

³ The parties’ failure to raise noncompliance with ICWA in the juvenile court does not preclude mother from arguing the point on appeal. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.)

Mother relies on *In re K.R.* (2018) 20 Cal.App.5th 701 which conditionally reversed an order terminating parental rights due to the social welfare agency's failure to interview certain relatives about possible Indian ancestry. In *K.R.*, the agency learned that the dependent children might have Cherokee heritage through their father. (*Id.* at p. 705.) The agency noticed the Cherokee tribes, but did not include identifying information about paternal great-grandfather even though several paternal relatives were "readily available" and likely could have supplied some of the missing biographical information. (*Id.* at p. 707.) *K.R.* concluded that the agency's reports did not show any efforts to interview family members who might have pertinent information, and the court did not inquire as to what efforts the agency made to contact the paternal relatives. (*Id.* at p. 709.) Accordingly, the juvenile court "failed in its duty to ensure compliance with ICWA." (*Ibid.*)

Mother argues that, as in *K.R.*, the juvenile court here also failed to ascertain whether the Department had conducted an adequate investigation, including interviews with maternal relatives other than maternal grandfather. However, in *K.R.*, the appellant parent pointed to relatives who were readily available and information that could have been supplied, such as whether great-grandfather was "living or deceased." (*K.R.*, *supra*, 20 Cal.App.5th at p. 707.) On appeal mother does not identify any additional relatives she now believes should have been contacted, or what information they might have provided about son's Indian ancestry. Her reliance on *K.R.* does not assist her.

The ICWA notices sent to the tribes in the present case contained identifying information for mother, maternal grandmother and grandfather, as well as for a maternal great-

grandmother and great-grandfather. At the July 2018 hearing, with mother present, the court inquired of maternal grandfather about the family's Indian heritage. Maternal grandfather answered that his family "who came from the Alabama Territories to Texas in approximately 1827 had one family member," a "woman who's married to my direct lineage, Alexander Boikin." He further indicated his family had attempted to "find[] proof from that period," and had "tried to trace this down for years." At the same hearing, mother's counsel added that mother told her that "other people from her family have tried to register and were not able to. Not eligible."

Based on mother's and maternal grandfather's statements, the juvenile court reasonably could have concluded that maternal grandfather was in possession of all of the relevant information about family members who may have had Indian ancestry—his family had tried to trace lineage but without success. And it was in light of the information from maternal grandfather that mother had retracted her earlier statement. There was no suggestion that other family members had additional information—the only other family member mentioned had for years tried to track down any Native American heritage without success. Nor was the court required to expressly inquire of mother why she retracted her statement that her family may have Indian ancestry. The retraction was essentially explained by mother's counsel when she stated that mother had told her "other people from her family have tried to register and were not able to. Not eligible." On this record, the Department was not required to conduct a further inquiry into the family Native American heritage. (See *A.M.*, *supra*, 47 Cal.App.5th at p. 323 ["There is no need for further inquiry if no one has offered

information that would give the court or [the agency] reason to believe that a child might be an Indian child. This includes circumstances where parents ‘fail[] to provide any information requiring followup’ [citations]”.)

3. *Duty of Notice*

Mother also contends the juvenile court erred in finding that ICWA did not apply to son absent proper notice to the tribes. The Department argues that it was not required to provide notice under ICWA as to son because in fact there was no reason to know he was an Indian child, and thus, the court did not err in finding ICWA did not apply. As we shall next explain, the information provided by mother and maternal grandfather did not meet the “reason to know” criteria set forth in ICWA and related California statutes such that notice was required.

The Department is required to provide notice to the tribes if it knows or has “reason to know” the child is an Indian child. (25 U.S.C. § 1912(a); see also § 224.3, subd. (a); Cal. Rules of Court, rule 5.481(b)(1).) Under California and federal law, there is “reason to know” a child is an Indian child when “(1) A person having an interest in the child . . . informs the court that the child is an Indian child. [¶] (2) The residence or domicile of the child, the child’s parents, or Indian custodian is on a reservation or in an Alaska Native village. [¶] (3) Any participant in the proceeding, officer of the court, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child. [¶] (4) The child who is the subject of the proceeding gives the court reason to know that the child is an Indian child. [¶] (5) The court is informed that the child is or has been a ward of a tribal court. [¶] (6) The court is informed that either parent or the child possess an

identification card indicating membership or citizenship in an Indian tribe.” (§ 224.2, subd. (d); 25 C.F.R. § 23.107(c).)

The anecdotal information maternal grandfather provided about the family’s 19th century ancestor did not constitute information that son “is an Indian child” or information “indicating that the child is an Indian child” such that it triggered ICWA notice requirements. (§ 224.2, subd. (d)(1) & (3); 25 C.F.R. § 23.107(c).) We conclude no ICWA notice was required. The mistakes in the actual notice provided the tribes were, therefore, of no legal consequence, and the juvenile court did not err in concluding there was no reason to know ICWA applied.

DISPOSITION

The order is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.