Filed 9/11/17 In re D.N. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.N., a Person Coming Under the Juvenile Court Law.	B279596 (Los Angeles County Super. Ct. No. DK 18159)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Temporary Judge. (Pursuant to Cal. Const., art. VI, §21.) Conditionally reversed and remanded.

Richard D. Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

Mother Stacey H. appeals from a dispositional order removing her daughter, D., from her custody. Mother contends substantial evidence did not support the removal of D. and that reasonable alternatives could have ensured D. was safe in her care. Mother also argues that the court unreasonably ordered her to pay for reunification services without considering her financial situation. Finally, mother argues that the court and the Los Angeles County Department of Children and Family Services (DCFS) did not fulfill their investigatory and notice obligations under the federal Indian Child Welfare Act of 1978 (25 U.S.C § 1901 et seq., ICWA). We agree with mother's last argument and conditionally reverse and remand for ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has four minor children. At the time of the events discussed below, the three oldest children, J., then 11, and twins Sh. and Sk., then nine, lived with their father, A.G., who had full legal and physical custody of them pursuant to a Conciliation Court agreement and stipulated order. The youngest child, D., then two, lived with mother and mother's husband, S.N., D.'s father (father).

Referral and Investigation

In June 2016, DCFS received a report alleging emotional and physical abuse of all four children by father. According to the reporting party, father pulled a knife on mother during an argument and threatened to kill her in the presence of J., Sh., and Sk., who were visiting. The oldest child, J., intervened with

a knife of her own, prompting father to call her "fat ass," "bitch," and "asshole." J., Sh., and Sk. went to a neighbor's house for help, and the neighbor called the police. When the police responded, mother and father characterized their fight as a "verbal dispute" and did not report that either father or J. brandished a knife. No arrests were made. J., Sh., and Sk. all independently told a DCFS social worker that father threatened to kill mother with a knife and that J. intervened by brandishing a knife at father. The neighbor also reported that the children told her boyfriend, "Call the cops, he's trying to kill my mom." D. was visiting her paternal grandmother at the time and was not present.

While investigating the knife incident, DCFS learned that, earlier that same June day, father had an altercation at a pawn shop. Father punched a man in the face, and the man's wife responded by punching J., then 11, in the chest or stomach. J. told a DCFS social worker that "mother was next to her but did not do anything." Sk. told the social worker that father "does this a lot. He cusses and gets mad a lot," and also "starts fist fighting" frequently. Sk. reported that he did not feel safe with father "when he gets mad," and further reported that, in 2013, father threw him onto a bed and punched him in the stomach. J. reported a separate incident during which father hit mother and "threw" Sk. "at the wall." Sh. also told DCFS that father had hit him in the past—father "flipped me over and banged my head three years ago but I forgot what happened." Sh. did not feel safe any time father was around; his therapist told DCFS that Sh. "is afraid for his life when at [mother's] home if [father] is there."

DCFS also learned about a January 2015 incident involving mother and father. The police report of that incident states that

officers responding to a "Battery Domestic Violence" call found mother with "large visible scratch marks and abrasions to her neck and chest." Mother told the police that father "became irate" during a verbal argument and grabbed her "by the neck with both hands." He tried to choke her and scratched her neck and chest when she pushed him away. Mother managed to push father outside and lock the door. The police found father outside. He was "agitated" and "a strong odor of alcohol" was on his breath. Father told the officers that mother became irate during an argument, grabbed him by the hair, and dragged him to the front door while punching him 20 times in the head and face with closed fists. Father said that he left the home in fear and called the police. The only visible injury the officers saw on him was a small bruise on his left elbow. The officers determined father "was the dominant aggressor" and arrested him.

During an interview with a social worker, Mother denied any domestic violence between herself and father, or father and the children. She denied that J., Sh., and Sk. were with father at the pawn shop and further denied that J. was punched in the stomach there. Mother also denied the subsequent knife incident. She told a social worker that she and father had a "verbal argument" that "did not get heated and it did not escalate so she doesn't know why the kids would tell the neighbor to call the cops." After the social worker asked about a knife, mother said that J. grabbed a knife because she was "upset." Mother denied that father threatened her or J. Mother also denied that father "has ever put hands on the kids before," and said she had "no concerns" about him caring for the children. She told the social worker that father and Sk. were play wrestling during the bed-throwing incident in 2013. Mother gave the social worker

contact information for a maternal aunt and D.'s paternal grandfather.

DCFS was unable to speak with father because it could not locate him. Mother reported that he had been released from jail two weeks earlier and was living at an unknown sober living facility; she "swore" he did not live with her. DCFS also spoke to father's probation officer, who claimed to have "no information" about father's whereabouts or contact information. Using the contact information from mother, DCFS also contacted father's father, paternal grandfather. Paternal grandfather, who was divorced from and had no contact with paternal grandmother, reported that he did not have a close relationship with father and had not seen him for four months.

Petition and Detention

Although a social worker observed D. to be free of marks and bruises, DCFS concluded the risk level to D. was "Very High" and detained her with paternal grandmother on June 29, 2016. On July 5, 2016, it filed a petition under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j),[1] seeking to declare D. a dependent of the juvenile court. The petition included allegations about the knife incident, the throwing incidents involving Sh. and Sk., the January 2015 domestic violence incident, and father's history of drug abuse. DCFS alleged, in all 10 counts, that mother's failure to protect D. and her half-siblings from father's physical abuse and substance abuse placed D. at risk of serious physical harm.

The court held a detention hearing on July 5, 2016. The court found father to be the presumed father of D. and further

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

found that DCFS had established a prima facie case for detaining her. The court ordered DCFS to provide mother with reunification services, including weekly random drug and alcohol testing, individual counseling, and parenting counseling. DCFS referred mother to counseling, parenting education classes, and domestic violence victim counseling on July 25, 2016. Mother signed up for parenting classes that same day but did not sign up for the domestic violence classes.

The court also ordered DCFS to present evidence of due diligence in its efforts to locate father. DCFS prepared an initial declaration of due diligence dated August 5, 2016.

Jurisdiction and Disposition Report

DCFS filed a jurisdiction and disposition report on August 9, 2016. DCFS had limited success in interviewing the three older children for the report. J. declined to be interviewed—her father, A.G., informed the social workers that DCFS was a "trigger" for her mental health issues—and Sh. and Sk. were both reluctant to speak. Sk. discussed the pawn shop incident, during which he said father "'smacked the owner with a shoe on the head,'" and J. intervened to stop him but was thrown out of the store.

A.G. told the social worker that his children told him about the knife incident. He reported that J. told him she "pulled a knife" to "protect herself and her family." He described J. as a "parentified" child who "tries to fix things." A.G. also stated that J. seemed "'very proud'" of using a knife for that purpose. A.G. believed J. was telling the truth about the incident because "she wouldn't stop talking about it for several days." Mother told the social worker, "None of that happened." She said "she doesn't know why the children would say that an altercation took place,

but speculated that [A.G.] may have coerced them." Mother also reported, however, that J. grabbed a knife after father left the room and said, "I hate him, I hate my daddy." Mother said she believed J. was talking about A.G. at that point. She also reiterated, "None of that stuff happened."

Mother also denied the earlier incidents involving Sh. and Sk. being thrown. Regarding the Sh. incident, she stated, "None of this happened and if they did there would be pictures or proof and DCFS cases years ago. I don't know how many times I can say the same thing." Sh. maintained that father was "'a bad person'" who did "bad things," and "pushed me on the wall two years ago when he got really mad." Sh. reported that mother's response was to say, "Don't do that." Mother stated that she "never failed to protect the children," and again attributed the instant case to A.G. "confusing" Sh. and "coercing" all three older children. She claimed that she was the aggressor during the January 2015 incident: "I was the one that physically attacked [S.N.]. He called the cops. I inflicted bruises on myself" and scratched her own neck.

As to the Sk. incident, mother reiterated her claim that Sk. and father were wrestling. She emphasized that "there was . . . no swelling, no nothing," and claimed that father "never laid hands on me or the children." According to mother, J. was scared of A.G. and told mother that A.G. told the children to lie to DCFS. A.G. told the social worker that Sk. had told him that, at the time of the throwing incident, all four children were locked out of a motel room while mother and father "went at it." Father became angry when Sk. picked up D.; father then grabbed D. from Sk.'s arms and threw Sk. "across the room in anger."

Mother told the social worker that father had a history of substance abuse, but denied that he had a current problem because he was in rehab. She claimed that father left a rehab facility called Royal Palms on June 6 or 13, 2016 to enroll in an unnamed "religious-based program." Mother also stated, however, that she picked up father from Royal Palms on June 19, 2016 for a Father's Day visit. DCFS contacted Royal Palms on July 21, 2016. An employee there reported that father checked into the facility on June 14, 2016, left the same day, and had not returned.

Mother denied current drug use; she reported that she last used marijuana in 2013. She tested negative for drugs on June 28, July 26, and August 8, 2016. Mother expressed a desire to reunify with D. "as soon as possible." She also requested that D. be returned to her custody, because she had "no problem opening my home to DCFS at any time to show [S.N.] is not living with me and to get D[.] back to a normal routine and see her siblings."

DCFS observed D. in paternal grandmother's home. D. "threw a short-lived tantrum during which she banged her head repeatedly against the sofa cushions." Paternal grandmother redirected D. and reported that "this was new behavior that began after mother's last visit." Paternal grandmother also asked that a new monitor be found for the visits, because "mother has a hard time following the rules."

DCFS concluded D. would not be safe in mother's home "because mother has failed to protect her from father's physical abuse of D[.]'s half-siblings or his unaddressed substance abuse issues." DCFS also opined that mother "minimized" father's "violent history and the substance abuse problems that have led to his fugitive status," and needed to "develop greater awareness

of the impact of father's violent actions on all of her children." DCFS also expressed concern that mother "may have had ongoing contact with" father because of inconsistencies between her statements and "facts regarding father's whereabouts." DCFS recommended that D. remain suitably placed while mother "participates in services to address domestic violence for victims, anger management, parenting, and individual counseling."

Supplemental Filings

The jurisdiction and disposition hearing was continued several times before being held on December 1, 2016. In the interim, DCFS filed several additional documents with the court.

On August 19, 2016, a multidisciplinary assessment team held a meeting to discuss D.'s case. In its August 26, 2016 report, the team noted that mother was participating in individual counseling and parenting classes. It referred her again to classes for victims of domestic violence; the referral noted that the classes were free and offered three days per week.

In filings dated September 21 and October 19, 2016, DCFS reported that it was unable to locate father. According to the October filing, "the Department of Probation is also searching for father." Paternal grandmother reported, however, that father accompanied mother to a monitored visit on September 21, 2016. Despite being advised to inform DCFS before allowing father to participate in visits, paternal grandmother allowed him to participate and did not timely advise DCFS of his presence. She also claimed that she did not have an address or phone number for him. Mother denied participating in a visit with father.

In a third last-minute information, dated November 23, 2016, DCFS reported that it was still unable to locate father It also provided the court with an updated declaration of due

diligence. DCFS further reported that mother did not appear for her last 10 random drug tests. Paternal grandmother reported that mother's visits with D. were going well.

DCFS also reported that Mother sent DCFS two emails claiming that the jurisdiction and disposition report contained "false allegations, exaggerations, and lies." Mother also complained that DCFS did not interview relatives and friends who may have a favorable view of her. A social worker contacted two of the three individuals mother identified, a maternal aunt and a family friend. The maternal aunt, A.C., told the social worker that she did not get along with father and said that he did things that made her "question his credibility as a father," including getting angry and taking drugs. A.C. further stated that mother used to tell her "horror stories" about father and D.'s half-siblings but no longer did so because she was "with" father. A.C. opined that father was a "'monster'" who caused mother to lose herself. The family friend, M.F., was present during the January 2015 incident. According to M.F., mother and father both yelled at one another. M.F. also told the social worker that mother was bleeding from her neck and told her that she (mother) inflicted the wound upon herself to make it look like father attacked her. M.F. did not tell the police that. M.F. stated that mother's and father's interactions with D. were "'nothing short of cuteness'" and expressed hope that the family would reunite.

In another last-minute information dated November 29, 2016, DCFS reported that mother told a social worker that she had obtained over 1,000 pages of medical records for J., Sh., and Sk. that she claimed "illustrate that the children have not been injured" while in the care of mother and father. The social

worker was "unconvinced that these records are pertinent" but advised mother to bring them to the hearing. DCFS also reported it received an email from mother asserting that D. "was loved, well rounded and thriving" and accusing the social worker of lying to and about her.

DCFS also reported that paternal grandmother had again allowed father to participate in a monitored visit on November 19. DCFS revoked paternal grandmother's authorization to monitor mother's visits. DCFS also informed the court that it was assessing a maternal aunt, J.P., as a new placement for D. due to in part to its concerns about paternal grandmother's ability to protect D. "given her failure to abide by the Court's visitation orders."

Adjudication and Disposition Hearing

Father did not appear at the December 1, 2016 hearing. DCFS rested after the court admitted its reports and last-minute informations into evidence.

Mother called several witnesses. Los Angeles Police Department officer Nancy Castrejon testified that she responded to a call alleging child abuse at A.G.'s home on June 29, 2016. Castrejon determined the allegation was false after interviewing the children and failing to observe any visible injuries. Her report of the incident was admitted into evidence. Castrejon testified that she did not ask the children any questions about abuse at mother's home.

Then-12-year-old J. testified in chambers that she fabricated her previous statements about the June 2016 knife incident. She claimed that father never threatened mother with the knife; their fight was purely verbal. J. explained that she "made up a lie because I wanted the fighting to stop." She "knew

that if I said like stop yelling at each other they wouldn't listen," so she wanted the police to come and stop the fight. J. testified that she was not afraid of father and was not afraid that he would hurt mother or D. She further testified that she did not intercede in the fight with a knife; she simply "was holding one because I was in the kitchen." J. stated that she told a social worker the same thing. J. testified that mother was protective of her, but had no need to be protective around father "cuz he wouldn't hurt us."

During cross-examination, J. reiterated that she had lied about the knife incident to the neighbors, the police, her therapist, and a DCFS social worker, but was telling the truth in court. During redirect examination, she explained that she lied to everyone to ensure she was "keeping up the story constant." When asked by the court why she told everyone those lies and then changed her mind, J. said she did not know.

Mother also called Sk., then nine years old, to testify in chambers. When asked who father was, Sk. said, "I don't know what he really is to me because he doesn't treat me fair. Well, not fair, like - - like a kid. I'm just going to say step dad but not really one." Sk. also testified that he did not like father because "[h]e hit me before," and that he was afraid of father sometimes. Sk. testified that, on one occasion, father "just picked me up and then just, like, threw me" because he was upset that Sk. came into the house while mother and father were arguing. Sk. landed on a bed and his back hurt. Sk. said that mother observed the incident and told father to get out of the house. He agreed that mother was protective of him.

On cross-examination, DCFS counsel asked Sk. if he remembered telling a social worker that father punched him in

the stomach. Sk. said that he did, and clarified that incident occurred "before the one I was talking about." He also testified he told the social worker that he heard father threaten to kill mother on the day of the knife incident. Sk. did not see father with a knife that day, however. Sk. remembered telling the social worker that he did not feel safe when father was home.

DCFS did not call any rebuttal witnesses. Counsel for DCFS urged the court to discount J.'s testimony and rely on Sk.'s testimony and the documentary evidence to sustain the petition in its entirety. D.'s counsel joined the department's argument.

Mother's counsel asked the court to strike the failure to protect allegations from the petition. Counsel argued that D. was "somewhat differently situated from her half siblings." Counsel further contended that the throwing incidents involving Sh. and Sk. were "remote in time," and emphasized that there were no reports D. had ever been harmed, or that domestic violence occurred in D.'s presence. She argued that unspecified "safety measures . . . can be put into place to ensure D[.]'s safety back in the care and custody of her mother," and assured the court that mother "would be willing to abide by the court's orders, if the court was to order that [father] was to have monitored visits, not monitored by the mother." Mother's counsel also argued that mother "has availed herself of services," was currently participating in a parenting class, and "would avail herself of any other services that the court ordered."

The court stated that it agreed "to some extent" with mother's counsel that D. was in "a different position than the other children." The court noted, however, that the problems with father have "been ongoing for at least three or four years." The court told mother that she "should be shocked and appalled

to hear your son Sk[.] say what he said in chambers today," about remembering the pain of being thrown some three years after the incident. "These are the kinds of things that a parent has to understand when a kid gets hit. He remembered that vividly." The court continued, "It isn't as if they forget and they go on with their life and hug and kiss [father]. They're scared of him. . . . You heard them. You heard your daughter. She is so - - the poor thing is so confused."

The court continued: "The difference between D[.] and the other kids is what? [D.] lives with you. [D.]'s there day in and day out. And [D.]'s there and [D.]'s suspect [*sic*] to having [father] come into the home again because you're married. Nothing to stop him other than the fact that he's got a violation of probation and probably has warrants out for his arrest and he'll be in jail. But the fact remains you've been allowing this man to live with you all of this time, all of this time while he constantly is involved with either arguing with you, hitting your kids. All of these things are evident to this court and the evidence is overwhelming with regard to the allegations in this petition which is what we're looking at now."

The court found by a preponderance of the evidence "the entire petition, every allegation in here is sustained. His abuse of all of your kids." The court told mother, "you should be outraged and you're not. You're not." Instead, "[y]ou're visiting with him. And he's on the run. . . . But you still allow him around and I can't - - you're not - - I'm not the punishment court. I'm here to protect your child because you aren't. . . . You're just not protecting her. So the petition is sustained in its entirety."

As to disposition, the court found by clear and convincing evidence that there was a substantial danger to D.'s physical and

mental well-being in mother's care. It further found that DCFS made reasonable efforts to prevent D.'s removal, and that there were no reasonable means to protect D. short of removal. The court accordingly ordered D. to remain in the care, custody, and control of DCFS. The court ordered mother to submit 10 consecutive clean drug tests. It also ordered her to "do at least a 26 week DV class for victims." The court asked mother if she had enrolled in such a class, and mother said she had not. The court responded, "You just wasted six months. You could have completed it." Mother interjected that she did "not have the money" to take the classes. The court responded, "Ma'am, if you want your child back in your life you're going to find the money because that is probably the most important thing that you need to do and individual counseling because you got to understand why your child isn't living with you anymore and he's - - she's not living with you anymore because you're protecting [father] because of the violence in your home."

Mother stated that D. "has never once ever been neglected." The court responded, "Look. [D.] doesn't even need to be in the same room. [D.]'s in the same house and [s]he hears the two of you yelling and screaming at each other. [D.]'s probably cringing in bed. The fact remains this is going to end up putting [D.] into a psychiatrist's chair for the rest of his [*sic*] life when he [*sic*] gets older." Mother then told the court that father did not live with her. The court said, "Well, unfortunately you're married and he's on the loose and I don't know - - I'm not going to take the chance that he's coming back at this time."

The court ordered mother to participate in individual counseling with a licensed therapist "to address all of the issues of family history and disfunction [*sic*], substance abuse, domestic

violence, co-dependency, the affects [*sic*] of domestic violence and drugs on your children." The court further ordered that no limit be placed on the number of sessions that mother have. The court ordered monitored twice weekly visitation, supervised by someone other than paternal grandmother, and outside the presence of father.

The court set the matter for a six-month review hearing, telling mother, the hearing was "just to see if you're in your programs and if there's anything we can do to help in terms of contact and programs." The court instructed mother to "go to the financial evaluator on the third floor" before encouraging her to "get involved in these programs to reunite with your child." Mother responded that she was in "every single one besides the domestic violence. Everything. I'm already doing group therapy, individual therapy. I am seeing a psychiatrist, three parenting classes." The court replied, "Good." It added, "You need to be in DV for sure. If you had [a] police report it would have been free, could be through victims of violent crime. I think it's too late for that."

The court signed a case plan ordering mother to participate in weekly random drug testing, parenting classes, a 26-week class for victims of domestic violence, and individual counseling with a licensed therapist. The court checked a box on the form indicating that the referrals for these services were to be "Low cost/No cost referrals."

DISCUSSION

I. Removal of D.

Mother contends that the court's order removing D. from her care was not supported by substantial evidence. She challenges the court's finding that D. was at substantial risk of

harm as speculative, claiming it rested only on the court's comment that it was not going to take the chance that father would come back to mother's home. Mother also challenges the finding that there were no reasonable means to protect D. in her care. Specifically, she argues that DCFS "could have monitored the situation, and included neighbors as additional monitors should [father] return to Mother's home," and that the court could have ordered DCFS "to refer Mother to a domestic violence shelter so Mother and D[.] could remain together." Neither argument is persuasive.

Section 361, subdivision (c)(1) provides that a dependent child "shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] [that] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." The clear and convincing standard set forth in section 361, subdivision (c) "is for the edification of the trial court and not a standard of appellate review." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525.) "'"The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal."' [Citation.]" (*Id.* at pp. 1525-1526.)

"In reviewing the sufficiency of the evidence on appeal we consider the entire record to determine whether substantial evidence supports the court's findings." (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 134-135.) "We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Rather, we draw all inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding." (*Id.* at p. 136.) "The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record." (*Ibid.*)

The record as a whole supports the court's conclusion that returning D. to mother's care would pose a substantial danger to D. The record demonstrated that father was violent toward mother and D.'s older half-siblings on numerous occasions, using physical force and weapons against them. There was evidence that D. was present during at least one violent incident; Sk. said that father grabbed D. from his arms before throwing him across the room in 2013, when D. was just an infant. Even if D. was not the target of father's outbursts, "domestic violence in the same household where children are living *is* neglect." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) This is true whether the offender lives with the victim full-time, visits his or her home, or, as happened here, engages in altercations in front of the children in public spaces.

The court's findings did not rest solely upon "speculation" that father lived with mother or might return to her home. There was evidence that mother was in contact with father—he attended at least two visits with D., and mother's story about his whereabouts did not square with that of the rehab facility. The

court also heard evidence that, on at least some occasions, mother was near the children but did nothing to stop the violence. Instead, "'parentified'" child J. intervened in a conflict with a knife and sustained a punch from a stranger in a pawn shop. Mother denied much of the abuse and minimized that which she acknowledged. She maintained that father "'never laid hands on me or the children'" and accused A.G. of "coercing" the older children into fabricating stories. The court reasonably could conclude that mother's continuing contact with father and lack of appreciation for the risks he posed to her and the children, including D., posed a risk to D.

The record also supports the court's finding that there were no reasonable means to keep D. safe if she were returned to mother's custody. Despite being referred twice for domestic violence victims' classes, mother did not enroll or otherwise acknowledge the domestic violence problems in the family. She denied that any violence occurred, even telling a social worker and her family friend that she scratched and bruised herself. Mother also discounted her older children's reports of abuse and allowed father to visit with D. during her own monitored visits. The court could conclude from this evidence that ordering mother to move to a domestic violence shelter—an alternative that was not proposed by any party during the hearing—would do little to protect D. from father. Similarly, mother's novel and cursory suggestion that her neighbors be designated "as additional monitors" does not indicate how that would protect D. Mother and father engaged in domestic violence in the presence of a family friend, while the neighbors were present next door, and while they and the children were out in public at a pawn shop. The record indicated that paternal grandmother, a family

member, could not get mother to abide by visitation rules; the court reasonably could conclude that unrelated neighbors without a vested interest in the family likewise would be unable to ensure D.'s safety.

II. Reasonable services

Mother next argues that the trial court abused its discretion when fashioning her case plan. She "concedes the court and Department identified the problems leading to the loss of custody of D[.], and then identified services designed to remedy those problems," and does not argue that the services ordered were unreasonable or unwarranted. Rather, she contends that the court was improperly dismissive of her financial hardship. "Instead of finding a way to assist Mother to attend the [domestic violence] class, the court told Mother she was 'going to find the money' if she ever wanted D[.] returned to her care. Threatening a parent with taking their child completely out of their life due to lacking resources for a class the court wanted was an abuse of discretion in fashioning a reasonable reunification plan." The court's final case plan included low- or no-cost referrals and was not an abuse of its discretion.

Subject to limited exceptions not applicable here (see § 361.5, subd. (b)), the juvenile court is required to order reunification services for the mother and presumed father of a dependent child removed from parental custody. (§ 361.5, subd. (a); see also *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.) The court "may direct any reasonable orders to the parents or guardians of the child . . . as the court deems necessary and proper. . .," provided the orders are "designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d).) The court has broad

discretion to determine what services would best serve and protect the child's interest, and to fashion an order in accordance with that determination. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) However, the reunification plan must be appropriate for the family and take into account the unique facts relating to the family. (*Ibid.*; see also *In re Nolan W.*, *supra*, 45 Cal.4th at p. 1229.)

Mother argues that the juvenile court did not take the unique fact of her financial situation into account. While its oral comments that mother would need to "find the money" for domestic violence victims' classes "if you want your child back in your life" perhaps were not the most judicious, the court ultimately did not condition mother's receipt of services or possible reunification with D. upon her ability to pay. The court told mother to visit the financial evaluator and expressly ordered "Low cost/No cost referrals" for her. The multidisciplinary assessment team previously had referred mother to free domestic violence classes as well, though mother did not follow through with that referral. The court's oral remarks appear to have been targeted not at mother's inability to pay but rather at her apparent unwillingness to act upon the two previous referrals she had received for domestic violence classes. Mother has not demonstrated that the court abused its discretion by placing an undue financial burden upon her.

III. ICWA

Mother's final contention is that DCFS and the trial court failed to comply with their duties under ICWA. Specifically, she contends that "[b]oth known and unknown information were [*sic*] omitted from the three ICWA-030 notices sent to the tribes": paternal grandfather's name and contact information and

information about father's maternal great-great-grandmother, who allegedly "was taken off an Indian reservation and changed her name when she married." She seeks remand for "an adequate investigation into the family's Indian heritage, and to give appropriate notice to the appropriate tribes." We agree that a limited remand is warranted.

A. ICWA Requirements

The ICWA is a federal law "designed to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.' (25 U.S.C. § 1902; *Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30 [109 S.Ct. 1597, 104, 104 L.E.2d 29].)" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195.) The ICWA recognizes that tribes have an interest in Indian children ""distinct from but on a parity with the interest of the parents."" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) It requires "notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.'" (*Ibid.*, quoting 25 U.S.C. § 1912(a).) "ICWA notice ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child." (*In re Isaiah W.*, *supra*, at p. 8.)

DCFS and the court have affirmative and ongoing duties to inquire about the possible Indian status of a child during dependency proceedings. (§ 224.3, subds. (a) & (c); Cal. Rules of

Court, rule 5.481(a); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) These duties are triggered whenever the court or DCFS "'knows or has reason to know that an Indian child is or may be involved.' [Citation.]" (*In re Michael V.* (2016) 3 Cal.App.5th 225, 233.) These duties require, among other things, that DCFS interview the parents, extended family members, and anyone who might reasonably "be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c); rule 5.481(a)(4).) Failure to make an adequate ICWA inquiry may result in limited reversal and remand. (See, e.g., *Michael V.*, supra, at p. 235 [limited reversal where DCFS made no effort to find or interview children's maternal grandmother even though it had information that she was the family member with a "direct link to a tribe"].)

DCFS and the court also have a duty to provide notice of a dependency proceeding to a relevant tribe or tribes if "the court knows or has reason to know that an Indian child is involved." (25 U.S.C. § 1912(a); § 224.3, subd. (c).) "The notice sent to the Indian tribes must contain enough identifying information to be meaningful." (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) In addition to identifying the tribe in which the child is a member or may be eligible for membership, federal regulations in effect at the time required the notice to include the child's name, birth date, and birth place; the parents' names, birth dates and birth and death places; and all known names, birth dates and birth and death places of "maternal and paternal grandparents and great grandparents." (Former 25 C.F.R. § 23.11(b)(1), (3).)[2]

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[2] The federal regulations governing the ICWA were revised effective December 12, 2016. The new regulations apply to any child custody proceeding initiated on or after December 12, 2016,

Notice to a tribe under the ICWA must include the information identified in the federal regulations "if such information is known, including the name of a child's grandparent." (*In re C.D.* (2003) 110 Cal.App.4th 214, 225.) California law requires the same, and further requires inclusion of "any other identifying information, if known." (§ 224.2, subd. (a)(5)(A) & (C); see *In re Francisco W.* (2006) 139 Cal.App.4th 695, 703 ["It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the ones with the alleged Indian heritage."].)

The Judicial Council's mandatory form, Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act), ICWA-030, adopted effective January 1, 2008 and used by DCFS in this case, includes boxes for the required information, including birth date and place, for each parent, each parent's biological mother and father (the child's maternal and paternal grandparents) and each parent's four biological grandparents (the child's maternal and paternal great-grandparents). (*In re*

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even if the child has been involved in dependency proceedings prior to that date. A "child-custody proceeding" includes, as a separate proceeding, a termination of parental rights, a preadoptive placement or an adoptive placement. (25 U.S.C. § 1903(1); 25 C.F.R. § 23.2.) If any one of those types of proceedings is initiated on or after December 12, 2016, the new regulations apply to that proceeding. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 650, fn. 7.) The current version of 25 C.F.R. § 23.11 provides that "Notice must include the requisite information identified in [new] § 23.111." 25 C.F.R. § 23.111(d) identifies similar categories of information, including "If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." (25 C.F.R. § 23.111(d)(3).)

Breanna S., *supra*, 8 Cal.App.5th at p. 651.) Thorough compliance with notice provisions is required. Failure to include information required by the regulations (and/or California law) and known to the DCFS caseworker generally will result in limited reversal and remand for issuance of proper notice. (See, e.g., *id.* at pp. 651-656 [known information omitted from notices, including that relating to maternal grandmother and great-grandparents]; *In re S.E.* (2013) 217 Cal.App.4th 610, 615 [notice omitted name of great-great-grandfather, who mother claimed had Indian heritage]; *In re D.T.* (2003) 113 Cal.App.4th 1449, 1454-1455 [notices did not include known information, including mother's married name, current address, or grandparents' names].)

B. Relevant Facts

During mother's first in-person interview with DCFS, on June 22, 2016, she "denied ICWA." Mother also provided DCFS with the name and phone number of D.'s paternal grandfather at that time. DCFS contacted paternal grandfather on June 27, 2016. There is no indication in the record whether DCFS asked him about potential Indian heritage. DCFS was unable to locate father and therefore did not ask him about any potential Indian heritage.

On July 5, 2016, mother filed a "Parental Notification of Indian Status" form indicating that D.'s maternal grandparents may belong to or be eligible for membership in the Cherokee tribe. The form included the name of D.'s maternal grandfather, and the name and phone number of D.'s maternal grandmother. During a July 25, 2016 interview, mother orally informed a social worker that her maternal grandfather had Cherokee heritage and tried to register with a tribe in North Carolina. Mother

provided additional information on July 29.

On August 1, DCFS sent notice of the adjudication hearing then-scheduled for August 30, 2016 to mother, the Bureau of Indian Affairs, the United States Secretary of the Interior, the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians in Oklahoma. The notice identified D., her birth date, and place of birth. It also included the names and birth dates of both of her parents, and the names of both maternal grandparents. The notice included the name, address, and birth date of D.'s paternal grandmother, but did not include any information about her paternal grandfather, despite DCFS's knowledge of his name and phone number. Instead, it listed his name as unknown. All of the information for D.'s great-grandparents was listed as unknown.

At an August 9, 2016 pretrial conference, counsel for DCFS informed the court that DCFS needed more time to address ICWA issues. Specifically, counsel stated that she needed to obtain additional information about mother's potential Cherokee heritage. Mother's counsel responded that mother and maternal grandmother did not have any additional information and wanted to have the matter adjudicated as soon as possible. The trial court continued the matter.

In a last-minute information filed in advance of the August 30, 2016 hearing, DCFS reported that it mailed notices on August 1 and received return receipts from all three tribes indicating that D. was not an Indian child. DCFS further reported that, in the interim, mother had provided additional information "which renders the 8/1/2016 notices invalid." The additional information included the names and some birthdates for some of D.'s

maternal great-, great-great, and great-great-great grandparents. DCFS also informed the court that mother "sent an email stating that she has no information on her father's side of the family." It further reported that paternal grandmother informed DCFS that there was Native American ancestry on her side of the family. "On 8/22/2016, paternal grandmother stated that her great aunt reported that her mother (paternal great great grandmother) was . . . taken off an Indian reservation and our grandfather married her and changed her name. Paternal grandmother was unable to identify or provide any other information about the tribe or its location." Paternal grandmother provided the names and birth dates of several of her relatives. DCFS stated that it was "respectfully await[ing] the Court's orders regarding the mailing of updated ICWA-030 notices."

At the August 30, 2016 hearing, the court ordered DCFS to "resend the information out to all of the tribes with the new information on it." It asked for an update at the next hearing, which was scheduled for September 26, 2016. The September 26, 2016 hearing was later continued to November 30, 2016.

On September 1, 2016, DCFS mailed ICWA notices to the same recipients as before. They were accompanied by a letter dated September 1, 2016. The letter informed the recipients that additional information had been presented to the court and was included in the notice. The letter further stated that "some information does not fit with the notice format and is listed below." That information included the names and some birth dates of "Maternal great great grandparents," "Maternal great great great grandparents," and "Paternal great great grandparents." The attached ICWA notice included information about D.'s maternal great grandparents and paternal great

grandmother. It still listed paternal grandfather as "unknown."

By letter dated September 8, 2016, the Eastern Band of Cherokee Indians informed DCFS that, based on the information provided, D. was neither registered nor eligible to register as a member of the tribe. By letter dated September 20, 2016, the Cherokee Nation informed DCFS that D. was not an Indian child in relation to the Cherokee Nation.

On September 28, 2016, DCFS sent a third notice, identical to the second, to the only tribe yet to respond, the United Keetoowah Band of Cherokee Indians in Oklahoma. That notice was accompanied by the September 1, 2016 letter, which was updated to reflect the new hearing date of November 30, 2016. The United Keetoowah Band of Cherokee Indians in Oklahoma responded, by letter dated October 4, 2016, that "there is no evidence that supports the above referenced child(ren) is/are descendants from anyone on the Keetoowah Roll."

C. Analysis

Mother provided DCFS with paternal grandfather's name and contact information at an early stage of the case. DCFS's reports indicate that it successfully contacted paternal grandfather. Yet, it made no apparent attempt to ask him—or any other family member who may have had knowledge, like paternal grandmother—questions regarding his personal information or potential Indian heritage. Moreover, DCFS represented to the court and to the tribes that it knew nothing about paternal grandfather, including his name. This was error.

Respondent contends that its omission of paternal grandfather's information was harmless. It argues, "the claim of Indian heritage was made by the mother (Cherokee) and the paternal grandmother who stated that the American Indian

heritage ran through her side of the family. Therefore, there is no showing that the omission of the paternal grandfather's information was relevant, and the claim regardless was too vague." But the federal regulations require DCFS to provide the tribes with known information about lineal relatives, whether DCFS deems it relevant or not. Moreover, respondent's argument ignores the apparent abrogation of its duty of inquiry as to paternal grandfather. In this case, DCFS could not obtain ancestry information from father, as his whereabouts were unknown. However, father's absence did not absolve DCFS from its obligation to make at least a threshold inquiry about D.'s potential Indian heritage to paternal family members whose whereabouts were known. The record reflects that DCFS fulfilled that duty with respect to paternal grandmother but did not seek similar information from paternal grandfather. Remand is required, so that DCFS may make the inquiry and provide the previously noticed tribes and any additional tribes identified by the paternal grandfather with appropriate, complete notice.

Mother also contends that the notices omitted information about father's maternal great-great-grandmother, who allegedly "was taken off an Indian reservation and changed her name when she married." Respondent correctly points out that information about this relative and others named by paternal grandmother was included in the September 1, 2016 letter that accompanied the second and third notices sent to the tribes. Indeed, the response letter from the Cherokee Nation listed the names of those relatives, demonstrating that the letter was effective in communicating them. Because the tribes were noticed, we need not address respondent's contention that the information from paternal grandmother was mere "family lore"

not giving rise to the notice duty. (See *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467.)

DISPOSITION

The court's disposition order is conditionally reversed. The matter is remanded to the juvenile court for full compliance with the inquiry and notice provisions of the ICWA and related California law as set forth above. If after proper inquiry, no additional information is uncovered, or if after any necessary additional notice, no tribe intervenes, the order shall be reinstated.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.