Filed 6/20/17 In re I.P. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re I.P., et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B277422 (Super. Ct. Nos. J070126 & J070127) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	

A.C. appeals the juvenile court's order that terminated her parental rights. (Welf. & Inst. Code, § 366.26.)[1] She contends that termination was premature because it

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

occurred before the court resolved her children's status under the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.; see also § 224 et seq. [incorporating ICWA's requirements into state law].) We affirm.

BACKGROUND

In August 2014, the Ventura County Human Services Agency (HSA) filed a petition alleging that A.C.'s two children fall under the provisions of subdivision (b) of section 300. When HSA removed the children from A.C.'s care, A.C. reported that her father is a "full-blooded Apache." HSA completed a "Notice of Child Custody Proceeding for Indian Child" (ICWA-030) and sent it to eight Apache tribes, including the Jicarilla Apache Nation and the Mescalero Apache Tribe. The notice contains biographical information about A.C. and her mother, father, paternal grandparents, one great-grandfather, and two great-great-grandparents.[2]

The Jicarilla Apache Nation did not respond to HSA's notice. The Mescalero Apache Tribe replied that A.C.'s children do not meet the requirements for tribal membership and that it would not answer another ICWA inquiry "unless there is a significant change in [the] family's ancestry." In February 2015, the juvenile court found that ICWA does not apply to A.C.'s children.

One year later, HSA filed another petition alleging that A.C.'s children come within the provisions of subdivisions (b) and (g) of section 300. A.C. completed a "Parental Notification of Indian Status" (ICWA-020), declaring "I have no Indian ancestry

[2] The notice states that there is no known Indian ancestry through A.C.'s maternal grandparents. There is also no known Indian ancestry through the children's father.

as far as I know." At a hearing in March, the juvenile court again found that ICWA does not apply to A.C.'s children.

The juvenile court held a section 366.26 hearing on the second petition in September 2016. A.C. testified that her father "believe[s] he's connected to" the Jicarilla Apache Nation and the Mescalero Apache Tribe through his father. Though it is unclear whether his father was enrolled in either tribe, A.C.'s father was "starting the [enrollment] process" himself because of three relatives who are "registered Apache." At the conclusion of the hearing, the court noted that it had previously found ICWA inapplicable, and that that finding went unchallenged. The court did not make another specific ICWA finding before it terminated A.C.'s parental rights.

DISCUSSION

A.C. argues that the juvenile court prematurely terminated her parental rights because questions about her children's ICWA status remain unresolved. We disagree.

A county welfare department has a "continuing duty to inquire whether a child [in a section 300 proceeding] is or may be an Indian child . . . ." (§ 224.3, subd. (a).) If one of the child's family members "provides information suggesting the child is a member of a tribe," the department must "make further inquiry" into the child's status. (*Id.*, subds. (b)(1) & (c).) While a "comprehensive investigation" is not required (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39), the department must gather information about the child's parents, grandparents, and great-grandparents and relay it to relevant tribes (*In re J.O.* (2009) 178 Cal.App.4th 139, 154; see § 224.2, subd. (a)(5)(C)). The juvenile court must then "[t]reat the child as an Indian child" until it has determined that ICWA does not apply. (25 C.F.R. § 23.107(b)(2) (2016); see

In re S.B. (2005) 130 Cal.App.4th 1148, 1157 [federal regulations implementing ICWA are binding on state courts].) Whether these requirements have been fulfilled is subject to our independent review where, as here, the relevant facts are not in dispute. (*In re Michael V.* (2016) 3 Cal.App.5th 225, 235, fn. 5.)

HSA fulfilled ICWA's requirements. During the first dependency proceeding, A.C. alleged that her father was a "full-blooded Apache." HSA gathered information about her children's parents, grandparents, and great-grandparents, plus one great-great-grandparent and two great-great-great-grandparents. It then sent that information to eight potentially relevant tribes. The tribes either did not respond or replied that the children do not meet their membership requirements. ICWA requires no more. (*In re K.M.* (2009) 172 Cal.App.4th 115, 119.)

A.C.'s assertions during the second dependency proceeding did not require HSA to make further inquiry because claims of Indian heritage based on "speculation" or "family lore" are insufficient to trigger this requirement. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1469.) For example, in *In re J.L.* (2017) 10 Cal.App.5th 913, 923, the mother's claim that she "might have some American Indian heritage" was too vague to require further inquiry because she had no additional information about her alleged Indian relatives. In *In re Hunter W.*, *supra*, at pages 1467-1468, the mother's suggestion that she "might" have Indian heritage through her father was insufficient to trigger additional inquiry because she could not identify a specific tribe or any relative who was a member. In *In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1516, the father's statement that there was a "possibility" his great-grandfather "was Indian" was too vague because he provided no additional

information. And in *In re O.K.* (2003) 106 Cal.App.4th 152, 155-157, the grandmother's statement that the children's father "may have Indian in him" was too vague because she was not enrolled in a tribe and did not know whether she or the children's father would be eligible for enrollment.

During the second dependency proceeding, A.C. initially declared that she has "no Indian ancestry as far as [she] know[s]." She later testified that her father "believe[s] he's connected to" one of two Apache tribes through his father and that he was "starting the process" to enroll. She also thought she had three other relatives who are "registered Apache." But A.C. provided no specifics. As in the cases cited above, A.C.'s vague, inconsistent statements are insufficient to trigger additional ICWA inquiry by HSA.

Even if they were, further inquiry would have been futile because HSA had already provided the relevant tribes with the information. During the first dependency proceeding, HSA gathered more information on A.C.'s relatives than required under ICWA. It sent that information to both the Jicarilla Apache Nation and the Mescalero Apache Tribe, the two tribes to which A.C.'s father "believe[s]" he is connected. The former tribe did not respond, which permitted the juvenile court to find that ICWA did not apply. (§ 224.3, subd. (e)(3).) The latter tribe said that the children were ineligible for membership absent a change in ancestry, something A.C. did not allege. Because A.C. provides no evidence that additional notices to the tribes would have produced a different result, further inquiry was not required. (Cal. Rules of Court, rule 5.481(a)(4).) The juvenile court properly determined that A.C.'s children are not Indian children

and was not required to treat them as such under the federal regulations.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel, for Plaintiff and Respondent.