Filed 12/21/16 In re Samantha R. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SAMANTHA R. et al., Persons Coming Under the Juvenile Court Law.	B271056 (Los Angeles County Super. Ct. No. CK76609)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.J. et al., Defendants and Appellants.	

APPEALS from orders of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant T.J.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant Saul R.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

At successive contested review hearings, the juvenile court twice denied parents' requests for unmonitored visitation with their three young daughters earlier declared to be wards of the court. Both parents appealed each order, contending the orders were an abuse of discretion. The parents also contend insufficient evidence supports the court's finding that the Department of Children and Family Services (DCFS or the department) complied with the Indian Child Welfare Act (ICWA), because it failed to notify a particular tribe of these dependency proceedings. We consolidated the two appeals for purposes of oral argument and decision, after which father's appeal as to visitation became moot when he was granted unmonitored visitation.[1] We affirm.

BACKGROUND

These are the fifth and sixth appeals in this dependency case going back seven years. The family comprises mother and father and their three daughters, Samantha, S., and Emma, whose ages at the pertinent time were seven, four, and one, respectively. The family came to the department's attention most

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[1] Respondent's motion to dismiss the issue of father's visitation as moot is granted. Its request for judicial notice of postjudgment evidence is granted.

recently in July 2014, when it was reported father, Samantha, and S. were found asleep in a parked car containing two loaded handguns and methamphetamine. DCFS filed a petition pursuant to Welfare and Institutions Code section 300,[2] alleging father endangered the children and mother failed to protect them from him. Mother claimed her family had Native American heritage, with ties to "Blackfoot," Cherokee, or Sioux tribes. DCFS gave notice of the proceedings to the Department of the Interior, the Bureau of Indian Affairs, and those tribes to which mother claimed ties. All the tribes responded that the children were ineligible for membership. The juvenile court sustained the petition and ordered that the children be placed with mother and that she complete a parenting class, sexual abuse awareness counseling, and post-partum depression counseling.

During the reunification period, it was discovered that mother was abusing alcohol and drugs and neglecting the children. Mother disclosed she used medical marijuana to deal with post-partum depression, drank "to get drunk," and left the children in the care of a friend whose children had been removed due to her own substance abuse problem. Samantha reported she was left to care for Emma, changing her diaper and feeding and bathing her while mother slept in the evenings. She said, "My mom is always tired. When she comes home from work, she just locks herself in the room and goes to sleep. I have to care for my sisters." Mother's in-home support counselor reported mother would get up late, miss appointments, and forget to pick up the children from school.

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

In April 2015, nine months after filing its section 300 petition, DCFS filed a section 342 petition (new facts independently supporting jurisdiction), alleging mother's drug use and neglect put the children at risk. The department reported that mother had been receiving mental health services two to four times per month since December 2014 and tested negative for all substances three times but failed to test four times. The juvenile court sustained the petition, finding that mother "suffers from mental and emotional problems, including a diagnosis of Depression, which periodically renders [her] incapable of providing regular care for the children. The children S. and Emma are of such young age requiring constant care and supervision and the mother's mental health issues interfere with providing regular care and supervision of the children. As a result of mother's mental health issues, she has left the children in the care of an inappropriate caretaker . . . , and has allowed 7-year-old Samantha to supervise 3-year-old S. and 1-year-old Emma, placing the children at risk of harm." The court ordered the children detained in first shelter care and then two separate foster homes with monitored visitation. The court ordered that mother submit to a psychological assessment, take all prescribed psychotropic medications, submit to random drug testing, and enroll in a full drug rehabilitation program if she missed any tests or her marijuana levels did not decrease.

Mother tested positive for methamphetamine in June 2015, enrolled in a drug treatment facility, left the facility after about a month, and failed to submit to drug testing for several months in 2015 and 2016. In October 2015, she re-enrolled in a treatment center, where she received parenting classes and mental health

services, but was discharged for violating its rules. Mother then immediately enrolled in another live-in drug treatment facility.

Mother failed to visit the children in September or October 2015, when her whereabouts were unknown. By January 2016, she had enrolled in a sex abuse awareness counseling program.

In February 2016, the juvenile court denied mother's and father's requests for unmonitored visits but granted DCFS the authority to liberalize visitation. Both parents appealed.

On February 19, 2016, mother's substance abuse counselor reported mother was not committed to meeting her treatment goals. He reported she was typically late for meetings at the facility, did not complete all assignments, and sometimes after mental health appointments returned late to the facility. The counselor reported mother had a negative attitude toward residents and staff and, if she did not improve, she would have to find another substance abuse program. Two months later, the counselor reported mother was improving and her drug tests were negative. Mother expressed a desire to complete the live-in program.

Mother visited with the children for two to four hours every Sunday at the drug treatment facility. All visits were appropriate, and the children were happy to see her.

At a progress hearing on April 21, 2016, the juvenile court stated it was concerned that mother continued to exhibit behavioral issues in her live-in drug treatment program. It ordered the parents to undergo a psychological evaluation before conjoint counseling with the children began. Mother's counsel did not object to the order, but stated mother was "fine doing whatever the court believes would be in the best interest of her children." Mother requested no modification of her visitation

order but asked that DCFS be given discretion to release the children to her when she transitioned from her live-in facility to a sober-living facility that accepted children. The court denied the request, and both parents appealed. We consolidated the appeals.

DISCUSSION

Mother and father argue (1) the juvenile court abused its discretion in refusing to order unmonitored visitation and (2) insufficient evidence supported its finding that DCFS complied with the ICWA.

I. Visitation

Father contends the juvenile court abused its discretion by refusing to order that his visits with the children be unmonitored. Because DCFS and father inform us he now has unmonitored visitation, the issue is moot.

Mother contends the juvenile court should have ordered in both February and April 2016 that she enjoy unmonitored visitation with the children. We disagree.

A juvenile court has broad discretion to fashion dispositional orders, including orders regarding visitation, based on "'what would best serve and protect the child's interest . . . .'" (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) As a result, an "order setting visitation terms is generally reviewed for abuse of discretion." (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699, fn. 6; accord *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756; *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) "'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to

substitute its decision for that of the trial court.'" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) An abuse of discretion does not occur unless the juvenile court "has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.)

When the juvenile court declined in February 2016 to order unmonitored visitation, mother was two months into her third live-in substance abuse program, having made no progress in two prior programs and making little in the third. It was thus patently reasonable for the court to conclude unmonitored visitation would not best serve and protect the children's interests.

In April 2016, mother failed to ask for unmonitored visitation and made no objection to the order that maintained in place only monitored visitation. She thus forfeits the issue on appeal. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641 [failure to object to visitation order waived right on appeal to contend permitted visitation was insufficient].) In any event, just as the juvenile court could conclude that mother's progress two months into her third live-in drug rehabilitation program was insufficient to show unmonitored visitation would best serve the family, it could reasonably conclude that the progress she made in four months was similarly insufficient. Given the seemingly intractable problems that have plagued this family for years, it would be reasonable for the court not to overvalue incremental progress, and to be cautious in liberalizing visitation.

II. ICWA

Both parents contend insufficient evidence supports the juvenile court's finding that the department complied with its notice requirements under the ICWA. We disagree.

"The ICWA establishes minimum federal standards, both procedural and substantive, governing the removal of Indian children from their families. [Citation.] An 'Indian child' for purposes of the ICWA means 'any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.' [Citation.] The ICWA seeks to protect the interests of Indian children and promotes the stability and security of Indian tribes and families." (*In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.)

"[W]here the court knows or has reason to know that an Indian child is involved," the ICWA requires a party seeking foster care placement to notify the child's tribe of the proceedings. (25 U.S.C. § 1912(a); accord *In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) No foster care placement proceedings "shall be held until at least ten days after receipt of notice" by the tribe. (25 U.S.C. § 1912(a).) If the notice provision is not followed, an Indian child or parent or the tribe "may petition any court of competent jurisdiction to invalidate such action . . . ." (25 U.S.C. § 1914; *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.) The appellate court must then vacate the challenged orders and order a conditional remand for further proceedings that comply with the ICWA notice requirements. (*In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111.)

We review a juvenile court's ICWA finding for substantial evidence. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991.)

Here, mother informed DCFS that she may have ties to "Blackfoot," Cherokee, or Sioux tribes. DCFS thereafter gave notice of the dependency proceedings to the Department of the Interior, the Bureau of Indian Affairs, the Blackfeet Nation of Browning, Montana, and the three federally recognized branches of the Cherokee Nation—the Eastern Band of Cherokees located in North Carolina and the United Keetoowah Cherokee and the Cherokee Nation, both in Oklahoma.

DCFS also noticed the 16 reservations that are home to various members of the extended Sioux/Lakota nation: The Sioux Tribe of the Fort Peck Reservation in Poplar, Montana; the Cheyenne River Reservation in Eagle Butte, South Dakota; the Crow Creek Reservation of Fort Thompson, South Dakota; the Flandreau-Santee Reservation of Flandreau, South Dakota; the Lower Brule Sioux of Lower Brule, South Dakota; the Lower Sioux Reservation of Morton, Minnesota; the Oglala Sioux of Pine Ridge, South Dakota; the Prairie Island Sioux of Welch, Minnesota; the Rosebud Sioux of Mission, South Dakota; the Santee Sioux of Niobara, Nebraska; the Shakopee-Mdwakanaton Sioux Community of Prior Lake, Minnesota; the Sissiten-Wahpeton Sioux of Agency Village, South Dakota; the Spirit Lake Sioux of Fort Totten, North Dakota; the Standing Rock Sioux of Fort Yates, North Dakota; the Upper Sioux Nation of Granite Falls, Minnesota; and the Yankton Sioux of Marty, South Dakota.

Finally, DCFS noticed an Assiniboine tribe that shares the Fort Peck Reservation in Poplar with a segment of the Sioux tribe, *supra*.

Given this comprehensive notice, we conclude substantial evidence supports the juvenile court's finding that the department complied with its responsibilities under the ICWA.

Mother and father argue the department was also required to notice the Assiniboine tribe of the Fort Belknap Community of Harlem, Montana.

Mother argues the Assiniboine tribe should have been noticed because on a Web site where the California Department of Social Services maintains a list of federally recognized tribes and their contacts for service of notice, the listing for the Sioux tribe of the Fort Peck Reservation in Reservation in Poplar, Montana, *supra*, has the following entry: "Sioux (See Assiniboine), Fort Peck Reservation, Poplar, Montana." Mother argues this is likely the result of members of the Sioux tribe living on the same reservation as members of the Assiniboine tribe, which means the Sioux and Assiniboine tribes are one and the same for notice requirements and "function as one in determining whether a child is an Indian child." Therefore, mother argues, DCFS should have notified not only the Assiniboine tribe residing on the Fort Peck reservation (which it did), but also the Assiniboine tribe residing on the Fort Belknap reservation, which has no Sioux presence but where, according to mother, "it is highly probable [Sioux] have resided" too.

We were unable to access the list to which mother refers at the Web site she gives, but assuming for argument that she accurately represents its contents, her conclusions do not follow. Nothing about the listing "Sioux (See Assiniboine)" suggests the Sioux and Assiniboine tribes have merged for purposes of determining whether a child is eligible to enroll in either. The most that can be inferred is that they reside on the same reservation, as mother speculates. The ICWA requires notice only to a tribe to which a dependent child might belong, not to

one that shares a reservation with that tribe nor to that second tribe's branches elsewhere.

Relying on the same Web site, father argues it is likely that members of the Assiniboine tribe could also be members of the Sioux tribe. But again, assuming that two tribes live in the same place does not suggest a member of either is a member of both.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.