Filed 7/27/17 In re Shane R. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SHANE R., JR., et al., Persons Coming Under the Juvenile Court Law.	B277547 (Los Angeles County Super. Ct. No. DK16548)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SHANE R., SR., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Nichelle Blackwell, Referee. Affirmed.

Daniel G. Rooney, 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, Principal Deputy County Counsel, for Plaintiff and Respondent.

Shane R., Sr. (father), challenges the juvenile court's jurisdictional findings and dispositional orders regarding his children, Shane R., Jr. and Grace R. Only the children's mother (who is not a party to this appeal) claimed possible Native American heritage, and notice pursuant to the Indian Child Welfare Act (ICWA), and corresponding California law[1] was sent to the relevant tribes and governmental agencies regarding the maternal family's information. Father, who has never made a claim of Indian ancestry, contends the orders from which he appeals must be reversed or, that a limited remand is required, because (1) the ICWA notice omitted names and identifying information for specific paternal relatives, and (2) the court failed to review the notice for completeness. We conclude no error occurred. Alternatively, assuming error did occur, it was harmless. Accordingly, we affirm.

BACKGROUND

Jurisdiction/Disposition

The jurisdictional and dispositional evidence is not relevant to this appeal which concerns only the sufficiency of ICWA notice. We note only that in April 2016, DCFS filed a section 300 petition on behalf of seven–year–old Shane and his newborn sister, Grace. DCFS had received an emergency referral advising that even though Grace was fine, the parents

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[1] (25 U.S.C. § 1901, et seq.; Welf. & Inst. Code, § 224, et seq.) Unless otherwise noted, statutory references are to the Welfare and Institutions Code.

had her transported via ambulance to an emergency room because father was hallucinating and believed the infant had stopped breathing and was vomiting. Father, who admitted using methamphetamine while trying to care for Grace, was under the influence when he arrived at the hospital and had to be restrained. Mother did not know that father was under the influence at the time of this event, although she noticed he was acting paranoid (he thought someone was in the house) when she woke to feed the baby.

The operative first amended petition (FAP)–precipitated by a violent, drug–related confrontation between the parents–was filed in May 2016. The FAP, which was subsequently sustained as pled, alleged, among other things, that the children were neglected and at risk of physical and emotional harm as a result of their parents' extensive history of domestic violence, past and ongoing substance abuse, and mother's untreated mental and emotional problems. (§ 300, subds. (a), (b).) At all relevant times, the children lived in a house with their paternal and maternal grandmothers and, at times, one or more parent.

ICWA Evidence

When the children were first detained on April 18, 2016, each parent completed a standard Judicial Council "Parental Notification of Indian status" form (ICWA-020). On his form, father checked the box stating he had "no Indian ancestry as far as [he knew]." Mother stated she "may have Indian ancestry," possibly "Cherokee." The court found the ICWA did not apply as to children's presumed father. DCFS was ordered to

provide ICWA notice to three Cherokee tribes, the Bureau of Indian Affairs (BIA) and all appropriate parties on behalf of mother.

In its report for the May 24, 2016, detention hearing, DCFS reiterated the court's earlier finding that the ICWA did not apply as to father, and that the court had directed DCFS to notify the BIA and three Cherokee tribes on mother's behalf. It is undisputed that ICWA notice was correct as to mother. There is no indication in the record that father's Indian ancestry was ever investigated.

Father attended the joint Jurisdictional/Disposition hearing on June 8, 2016, at which the FAP was sustained. In its report for that hearing, DCFS noted again that the ICWA had been found inapplicable as to father. The agency reported that an investigator interviewed mother and "recorded all the information" regarding the ICWA. DCFS contacted but was unable to obtain additional information from the maternal grandmother regarding the children's Indian heritage due to impediments posed by her mental health or a cognitive impairment.

The ICWA notices were provided to the court as attachments to the May 24 detention report. Those attachments (ICWA-030 forms) indicate that separate notices–identical but for name, birth date and place of birth–were sent for each child to the Secretary of the Interior, the BIA, three Cherokee tribes, and the parents. Each notice contains the parents' names, dates of birth and current addresses, mother's claim of Cherokee heritage, and names and identifying information and claims of Cherokee heritage for the maternal grandparents and maternal great–grandmother. The notices include the maternal great–grandfather's name and

information, and identify claimed tribes or bands as "unknown." The notices do not contain the name, address, or place and date of birth of the paternal grandmother, grandfather or paternal great–grandparents. The notices indicate that information regarding tribes or bands is "not applicable" as to father, and "unknown" as to paternal relatives.

Before proceeding to disposition, the court observed that the ICWA issue was unresolved, as no tribe had responded and the 60–day period had not lapsed. A further progress hearing (§ 366.21, subd. (e)) was set for early December 2016. The children were declared dependents and removed from parental custody. The parents were ordered to comply with a reunification plan and given monitored visitation. Father appeals.

DISCUSSION

Father contends reversal is required because DCFS failed to inquire of him or the paternal grandmother (with whom DCFS personnel had regular contact), whether the children's paternal family may have Native American ancestry in order to provide as much correct information as possible to enable the Cherokee tribes to conduct a meaningful search. He also contends that the trial court erred in failing to perform its duty to examine documentation supplied by DCFS for completeness.[2]

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[2] Father also takes issue with the fact that the ICWA Inquiry Attachment [ICWA-010(A)] to the FAP was left blank. This contention lacks merit. This form need not be attached to a subsequent petition where, as here, there is no new information. (Cal. Rules of Court, rule

In dependency proceedings, DCFS and the court have affirmative and ongoing duties to inquire about the possible Indian status of the child. (§ 224.3, subds. (a) & (c); rule 5.481(a); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) Notice of a dependency proceeding must be given to the 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).) Both the ICWA and California law, which tracks the ICWA in this regard, require that the notice provide all known information concerning the child's parents, grandparents, and great-grandparents. (25 C.F.R. § 23.11(a) & (d) (2013); 25 U.S.C. § 1912(a); § 224.2, subd. (a)(5).) Thorough compliance with notice provisions is required. The goal of the ICWA notice is to provide a tribe sufficient information to enable it to conduct a meaningful review of its records to determine a child's eligibility for membership. (*In re S.E.* (2013) 217 Cal.App.4th 610, 615 (*S.E.*); 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."].) 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

5.481(a)(1). Further "rule" references are to the California Rules of Court.)

Father's claims are cognizable on appeal notwithstanding his failure to raise them with the juvenile court. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 15.)

(*Michael V.*).) 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 [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"].)

"We review the trial court's findings whether proper notice was given under ICWA . . . for substantial evidence. [Citation.]" (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251 (*D.N.*).) "'Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances. [Citations.]' [Citation.]" (*S.E., supra,* 217 Cal.App.4th at p. 615.) For example, "[d]eficiencies in ICWA inquiry and notice may be deemed harmless error when, even if proper notice had been given, the child would not have been found to be an Indian child." (*D.N., supra,* 218 Cal.App.4th at p. 1251; see *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413 (*Antoinette S.*) [omission of information concerning non-Indian relatives is harmless error and reversal or remand would "exalt form over substance" where it was apparent that no further information regarding Indian ancestry was available].)

When the children were first detained in April 2016, father informed DCFS and the court he had no reason to believe that he had any Indian ancestry. He has never wavered from that position. Nor has he suggested

that any of the children's paternal grand– or great–grandparents has or may have Native American ancestry. DCFS did omit from the ICWA notice identifying information regarding the paternal grandmother, with whom its caseworkers had regular contact. Father contends that DCFS also erred by failing to interview the paternal grandmother to endeavor to obtain information regarding the paternal grandfather and paternal great-grandparents, and that the court erred in failing to review the ICWA notice for completeness.

We disagree. The statute requires that inquiry be made of anyone who might reasonably "be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c).) There has never been a suggestion that any member of the children's paternal family is related to the alleged Cherokee Indian ancestors to whom they are related by way of mother. Where, as here, no parent or interested party suggests otherwise, we see no reason to assume that any paternal family member may reasonably be expected to have information relevant to the children's eligibility for or status in an Indian tribe.[3] To the extent

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[3] Even if error did occur (it did not), it was plainly harmless. (See *In re H.B.* (2008) 161 Cal.App.4th 115, 122 [parent's statement to social worker denying Indian ancestry and failure to indicate that any of the children may have Indian ancestry throughout family's lengthy involvement with DCFS provides ample support for conclusion that any error by juvenile court was harmless]; *In re A.B.* (2008) 164 Cal.App.4th 832, 843 [where both parents denied Indian ancestry, court's failure to make inquiries was harmless error and limited remand for technical compliance with the ICWA inquiry requirement would only cause unwarranted delay]; *Antoinette S., supra*, 104 Cal.App.4th at p. 1413

Michael V., suggests otherwise, we respectfully disagree. (See *Michael V., supra*, 3 Cal.App.5th at p. 235 [indicating that relatives with "no Indian ancestry on their side of the family" should be interviewed].)

DISPOSITION

The order is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.

[omission of information regarding non-Indian relatives is harmless error if notice contains all known information about Indian parent and relative].) A reversal and limited remand to effect technical compliance with ICWA notice requirements would exalt form over substance and serve no purpose but delay.