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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.R. et al., Persons
Coming Under the Juvenile
Court Law.

B289093
(Los Angeles County
Super. Ct. No. DK24707)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

R.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Karin Borzakian, Commissioner. Affirmed and
remanded with directions.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, and Tracey Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

The sole issue in this dependency appeal is uncontested: The parties agree that the case must be remanded to the juvenile court for compliance with the Indian Child Welfare Act (ICWA) (25 U.S.C., § 1901 et seq.). We remand the case for the Department of Children and Family Services (DCFS) to investigate the applicability of ICWA. After its investigation, DCFS shall notify the juvenile court of its action, and the juvenile court shall determine whether ICWA notice requirements have been satisfied and whether the children are Indian children. We affirm the challenged orders and remand with directions.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2017, DCFS filed a Welfare and Institutions Code section 300 petition identifying R.C.'s (mother's) seven children (ranging in age from an infant to a 14 year old) and alleging that jurisdiction was warranted under section 300, subdivisions (a), (b), and (j). Allegations included physical abuse and substance abuse. A psychological evaluation revealed that mother was suffering from symptoms of psychosis, with paranoid and persecutory ideations. Three of the children were placed with paternal grandmother, two were placed in one foster home, and two others were placed in a different foster home.

In addition to the seven children named in the petition, mother's parental rights had been terminated with respect to

two older children. Numerous prior referrals were reported, including one alleging that mother fed the children only grass. According to DCFS, mother's adult son killed the father of six of the children named in the current petition. The father of the seventh child also was deceased.

Mother reported that she may have Indian ancestry but identified no specific tribe. The jurisdictional report indicated that the children may have Cherokee heritage. DCFS further interviewed mother, but mother was "not sure" of the tribe and would not provide maternal grandmother's address or date and place of birth. Mother also refused to provide information about the children's fathers. DCFS prepared and sent notices required by ICWA, but those notices were incomplete. Based on the incomplete notices, the Bureau of Indian Affairs (Bureau) was unable to evaluate the children's status. The Bureau indicated it needed information concerning maternal and paternal grandparents.

The record does not show that the social workers interviewed any of mother's relatives to obtain information regarding possible Indian heritage. Mother timely appealed from an order concerning grandmother visitation and an order denying her *Marsden* motion.¹ (*People v. Marsden* (1970) 2 Cal.3d 118.) On appeal, mother raises no issue with respect to visitation or with respect to the denial of her *Marsden* motion.

¹ Mother initially purported to appeal from 21 orders of the juvenile court. She later filed an amended notice of appeal.

DISCUSSION

“The federal Indian Child Welfare Act of 1978 (ICWA; [citation]) provides: ‘In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.’ (25 U.S.C., § 1912(a).) This notice requirement, which is also codified in California law [citation; . . .], enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding.” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 5.)

Notice pursuant to ICWA requires identifying the children’s ancestors. This includes “‘[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents . . . including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.’” (*In re N.G.* (2018) 27 Cal.App.5th 474, 480.) DCFS has a “‘continuing duty’” to inquire whether the children were Indian children. (*Id.* at p. 481.)

The record does not show that DCFS adequately investigated the children’s background to provide the information required in ICWA notices. Mother can raise this issue at any point in the dependency proceedings. (*In re Isaiah W., supra*, 1 Cal.5th at p. 15.) The parties agree the case therefore must be remanded for further investigation and additional notice.

(*In re E.R.* (2018) 28 Cal.App.5th 74, 84.) On remand, the trial court must ensure that for each child, DCFS fully investigates the matrilineal and paternal ancestry and, if appropriate, provides new ICWA notices to the Bureau.² The court shall then determine whether the ICWA notices provided the required information and whether the children are Indian children.

DISPOSITION

The juvenile court's orders are affirmed. The juvenile court is directed to order DCFS to investigate the applicability of ICWA. At the conclusion of that investigation, the juvenile court shall make findings that the ICWA notices provided the requested information and whether one or more of the children are of Indian ancestry.

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BENDIX, J.

We concur:

JOHNSON, Acting P. J.

CURREY, J.*

² We are aware that a district court in Texas concluded ICWA was unconstitutional for many reasons, including that it violates equal protection and improperly requires state agencies to apply federal standards to state claims. (*Brackeen v. Zinke* (N.D. Tex. Oct. 4, 2018, No. 4:17-cv-00868-O) ___ F.Supp.3d ___ [2018 U.S. Dist. Lexis 173115, *44, 52-53].) The parties do not raise any issue with respect to the constitutionality of ICWA, and we are not bound by the lower federal court's holding.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.