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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B281233
(Los Angeles County
Super. Ct. No. DK19288)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.C. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, Pete R. Navarro, Referee. Dismissed in part, affirmed in part, and affirmed and remanded in part.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant, K.C.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant, Stephen N.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Two of four parents appeal, challenging the dispositional orders for three half-siblings based on noncompliance with the notice provisions of the Indian Child Welfare Act (ICWA). The Department of Children and Family Services (DCFS) concedes a limited remand is appropriate for one child, M.C., in order to secure compliance with ICWA. DCFS, however, urges the appeal is moot as to N.C., over whom juvenile jurisdiction has been terminated. We agree with the latter contention and dismiss the appeal as to N.C. We affirm as to L.C. As to M.C., we affirm and remand with directions to comply with ICWA's notice requirements.

FACTUAL AND PROCEDURAL BACKGROUND

K.C. is the mother of N.C., L.C. and M.C. Each child has a different presumed father: Anthony is N.C.'s father, George is L.C.'s father,¹ and Stephen is M.C.'s father. Mother, the children,

¹ George's whereabouts remained unknown throughout these proceedings. He never appeared in these proceedings and no

and two of the fathers (Anthony and Stephen) moved to Los Angeles County from New Mexico in July 2016. Anthony and Stephen worked for the same company and were on a one-year assignment here.

DCFS received two separate referrals in September 2016, alleging emotional and physical abuse of N.C. and L.C. The children were removed from the family home pursuant to a warrant. Initially, there was no indication any of the children may be of American Indian heritage.

By the time of the detention hearing in October 2016, however, mother, Anthony and Stephen asserted possible eligibility for membership in one or more Native American tribes. The juvenile court ordered DCFS to determine if ICWA applied to any of the children.

In the weeks following the detention hearing, the parents and DCFS continued to investigate ICWA issues. The Judicial Council mandatory form ICWA-030 was sent to the Cherokee, Navajo, and Comanche tribes based on mother's claimed heritage and to the Cherokee and Osage Oklahoma tribes for Anthony (presumed father of N.C.) All three children were listed on the same form; Anthony was incorrectly identified as the father for M.C. and L.C. No form was sent on behalf of Stephen (presumed father of M.C.), even though Stephen also asserted Native American heritage. No form was sent on behalf of George, L.C.'s presumed father, as he was never located and mother had no information concerning his possible Indian heritage.

The Native American tribes responded and indicated none of the children was eligible for tribal enrollment.

counsel was appointed to represent him. Neither he nor Anthony is a party to these appeals.

The juvenile court also inquired into transferring the matter to New Mexico before the jurisdiction hearing. New Mexico did not accept jurisdiction over the children, however, and the matter proceeded to a jurisdiction/disposition hearing.

The section 300 petition was sustained based on abuse of all three children by mother and Stephen, mother and Stephen's domestic violence in the presence of the children, and Stephen's mental health issues that rendered him incapable of providing safe and regular care to the children. A number of allegations were dismissed.

The juvenile court did not make an express finding concerning the applicability of ICWA, but the disposition orders were admittedly not made under ICWA's more stringent requirements. All three children initially remained in foster care. N.C. was soon placed with her presumed father, Anthony. Dependency jurisdiction over her subsequently was terminated.

DISCUSSION

A. Stephen's Appeal

Stephen, as M.C.'s presumed father, challenges the dispositional order based solely on the juvenile court's failure to provide the required ICWA notices as to his child.² DCFS concedes a remand is necessary so the Native American tribes Stephen has identified (Cherokee, Apache, and Osage) are given proper notice as to M.C. As DCFS notes, reversal is not required insofar as his appeal is concerned.

² DCFS suggests the body of Stephen's opening brief might be read as concerning all three children, but appellate counsel unequivocally stated, "[M.C.] is the only minor subject of this appeal."

Rather, an affirmance and limited remand for the purpose of complying with ICWA are appropriate: “The lack of statutory notice nonetheless requires a limited remand to the juvenile court for the Department to comply with the notice requirements of the ICWA, with directions to the juvenile court depending on the outcome of such notice. If, after proper notice is given under the ICWA, [the child] is determined not to be an Indian child and the ICWA does not apply, prior defective notice becomes harmless error. ([*In re Antoinette S.* [2002] 104 Cal.App.4th [1401,] 1413-1414.) In this event, no basis exists to attack a prior order because of failure to comply with the ICWA. . . . Alternatively, after proper notice under the ICWA, if [the dependent child] is determined to be an Indian child and the ICWA applies to these proceedings, [the parent] can then petition the juvenile court to invalidate orders which violated title 25 United States Code sections 1911, 1912, and 1913. (25 U.S.C. § 1914; Cal. Rules of Court, rule 1439(n)(1).)” (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) We agree.

B. Mother’s Appeal

Mother has appealed from the dispositional orders as to each child. She also raises only ICWA issues and argues reversal is required because (1) the children were all listed on one Judicial Council ICWA form notice, (2) Anthony was erroneously identified as the father for all the children, and (3) the juvenile court did not make express findings concerning the children’s Native American status before entering the dispositional orders. Only the ICWA issue as to M.C. has merit.

1. N.C.

After mother noticed her appeal, N.C. was returned to the care of her presumed father, Anthony. At that time, DCFS asked this court to take judicial notice of post-disposition minute orders, including the one dated July 10, 2017, when N.C. was returned to her father's custody. DCFS also moved to dismiss the appeal as to N.C. on the ground of mootness. Mother has not objected to our taking judicial notice of the orders, and we do so. Mother did oppose the motion to dismiss as to N.C., asserting that if N.C. was once again removed from Anthony's custody, ICWA issues would be revived.

Subsequently, on October 6, 2017, the juvenile court terminated its jurisdiction over N.C. We also take judicial notice of the minute order from that date, which reflects, "Jurisdiction is terminated and stayed pending the receipt of juvenile custody family law order, to be prepared by father's counsel."

With the termination of juvenile court jurisdiction, there is no effective relief this court can provide as to N.C. We agree the appeal is moot as to her and should be dismissed. (*In re Experanza C.* (2008) 165 Cal.App.4th 1042, 1054.)

2. L.C. and M.C.

Mother first asserts reversal of the dispositional orders is required because all three children were listed on the same Judicial Council mandatory form ICWA-030. She cites no authority for her contention that this constitutes per se reversible error.

The ICWA notice was concededly inadequate as to M.C., and the limited remand discussed above in connection with Stephen's appeal is sufficient to determine if the error was

harmless. Any error is harmless as to L.C. because there has never been any information that his presumed father has Native American ancestry.³

Finally, an express finding concerning ICWA's applicability is not required. As the Court of Appeal has held, "we reject the contention that the trial court was required to make an express finding that ICWA did not apply. While the record must reflect that the court considered the issue and decided whether ICWA applies, its finding may be either express or implied." (*In re Asia L.* (2003) 107 Cal.App.4th 498, 506.)

Although the issue is now moot as to N.C., the juvenile court implied a finding that ICWA did not apply to her. The similar implied finding as to L.C. is unassailable. As to M.C., the mater is remanded for proper notice and then a determination as to whether ICWA applies to him.

³ As mother noted, the Osage tribe provided a "no record" response based on a search using Stephen and George's surnames. The juvenile petition, which listed all the presumed fathers, was attached to the Judicial Council form. That appears to explain the over-inclusive name search. Any error in this regard is harmless as well.

DISPOSITION

The appeal is dismissed as moot as to N.C. The dispositional order is affirmed as to L.C. As to M.C., the dispositional order is affirmed, but the matter is remanded for DCFS to comply with ICWA notice requirements. If it is determined after notice in compliance with ICWA that M.C. is not an Indian child and ICWA does not apply, the previous defective notice is harmless. If M.C. is determined to be an Indian child and ICWA applies, mother and Stephen may petition the juvenile court to invalidate the dispositional order as to that child.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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