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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.P., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B287796
(Super. Ct. No. 17JV00010)
(Santa Barbara County)

SANTA BARBARA COUNTY
CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

D.G. (mother) appeals the juvenile court's order terminating parental rights to her infant son, D.P. (Welf. & Inst. Code, § 366.26.)¹ She contends Santa Barbara County Child

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

Welfare Services (CWS) and the court failed to conduct a reasonable inquiry into mother's possible Indian ancestry, as required by the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) We agree. Accordingly, we conditionally reverse the order and remand the matter to allow CWS and the court to fully comply with ICWA and related California law.

FACTS AND PROCEDURAL BACKGROUND

Mother gave birth to D.P. in January 2017.² The child's father is D.P., Sr. (father). CWS filed a section 300 petition seeking jurisdiction over D.P. due to mother's drug use, father's history of drug use and the criminal histories of both parents. Father appeared at the detention hearing and denied Indian ancestry. The juvenile court ordered D.P. detained in CWS's custody. Both parents were allowed monitored visits with D.P.

At the jurisdictional hearing on February 16, mother was asked if she had any "Native American Indian heritage." Although she responded, "I don't think so," she signed the Parental Notification of Indian Status - Judicial Council Form (ICWA-020), which indicated she "may have" Chumash Indian ancestry.

On February 22, a CWS case worker spoke with mother on the telephone. Although they discussed scheduling a visit with D.P., no mention was made of mother's disclosure of possible Chumash Indian ancestry.

On March 1, CWS attempted to contact mother and father by telephone for the purpose of obtaining Indian ancestry information. When neither call was answered, the case worker left messages.

² All referenced dates are in 2017.

CWS made a second unsuccessful attempt to contact mother by telephone on March 15. On the same date, a case worker spoke with a maternal relative, J.R., in an effort to obtain Indian ancestry information. J.R. said she is mother's cousin (mother's mother and J.R.'s mother are sisters) and that she was told she had Aztec heritage through her father's side of the family, and Cherokee heritage through her mother's side. J.R.'s cousin "Gilbert" also informed her that they have an aunt who resides on a Chumash reservation. J.R. had no contact information for additional family members.

CWS sent mother an ICWA questionnaire on March 15. It was returned as unclaimed.

On March 16, CWS case worker Yuri Gomez spoke with mother by telephone. Gomez informed mother that the dispositional hearing would be held on March 27. Gomez asked mother "for information regarding her social history and explained the purpose for the collection [of] information and [mother] said she did not have time to participate in the interview, but agreed to speak with [Gomez] on Monday March 20." Mother stated that she was living with her maternal grandfather, but Gomez's notes do not indicate that mother's Indian ancestry was discussed.

Mother had a supervised visit with D.P. on March 17. Once again, there is no record of a discussion with mother regarding her Indian ancestry.

Gomez spoke again with mother on March 22. During that lengthy "dispositional interview," Gomez and mother discussed mother's drug treatment goals and reunification plans. Mother told Gomez that she was born in Santa Maria and is the eldest of three siblings. She said she remains in touch with her younger

brothers. Mother's own mother passed away when mother was a teenager and she went to live with her maternal aunt, Connie, in Santa Maria. There is no indication of any inquiry regarding mother's Indian ancestry, and it appears Gomez did not seek contact information for other relatives who may have such information, including mother's brothers, her maternal grandfather and Aunt Connie. The focus of the conversation was on mother's "case plan" and "what she would like to work on in the next six months to improve her life circumstances."

CWS's disposition report, dated March 27, states that the following maternal relatives were contacted and excluded as placement options: V.V., G.S., V.G. and J.R. There is no indication, however, that CWS questioned any of these relatives, other than J.R., regarding mother's Indian ancestry.

At the dispositional hearing, D.P. was declared a dependent of the juvenile court under section 300, subdivision (b). Family reunification services were ordered for both parents.

On March 30, mother cancelled a visit with D.P. due to transportation issues. Mother was informed there was no visit scheduled for that day. Once again, mother was not questioned about her Indian ancestry.

CWS made more unsuccessful attempts to contact mother regarding her Indian ancestry in April, May and June. Notwithstanding these unsuccessful attempts, CWS did have contact with mother during this period. On June 12, CWS case worker Vanessa Donati spoke with mother by telephone. Mother said she was using father's address to receive mail. She also outlined her efforts to find suitable housing. She reported that because she was on methadone, she could not stay at the Santa Maria shelter. There is no indication that mother was

interviewed regarding her Indian ancestry or asked about possible contact information for relatives with such information.

The juvenile court held an ICWA review hearing on June 26. CWS informed the court that ICWA notices were sent to the Santa Ynez Band of Mission Indians (Chumash), the Bureau of Indian Affairs (BIA) and the Secretary of the Interior, as well as to the parents. The Notice of Child Custody Proceedings for Indian Child (Form ICWA-30) that was sent to the tribes, the BIA and the Secretary of the Interior contained information regarding D.P., mother and father. No information was provided for any other maternal or paternal relatives. The court determined that additional notices should be sent to the Cherokee tribes given J.R.'s suggestion of Cherokee ancestry.

On June 28, mother telephoned CWS and requested a call back at a new telephone number. It is unknown whether she received a return telephone call.

On June 28, CWS sent ICWA-30 notices to the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee, the BIA and the Secretary of the Interior. There were no positive responses from any of the notices. CWS asked the juvenile court to find that ICWA did not apply to D.P. The court asked if there was any disagreement, and all counsel (including mother's and father's attorneys) replied "no." The court determined that ICWA did not apply.

At the six-month review hearing on September 26, the juvenile court found that mother's one visit with D.P. did not constitute sufficient visitation, and that father had failed to visit at all. The court terminated family reunification services and scheduled a section 366.26 hearing.

Mother appeared at the section 366.26 hearing and asked for another chance. The juvenile court denied that request, terminated mother's and father's parental rights and selected adoption as the permanent plan. Mother appeals.

DISCUSSION

The sole issue on appeal is whether CWS's efforts to comply with ICWA's inquiry and notice requirements were adequate. In all dependency cases, CWS and the juvenile court "have an affirmative and continuing duty to inquire" whether a minor subject to a petition under section 300 is or may be an Indian child within the meaning of ICWA. (§ 224.3, subd. (a).) If, based on this initial inquiry, CWS or the court knows or has reason to know that the minor is an Indian child, CWS must make a further inquiry "regarding the possible Indian status of the child, and to do so as soon as practicable, *by interviewing the parents, Indian custodian, and extended family members . . .* contacting the [BIA] and the State Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership in and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c), *italics added.*) The object of this inquiry is, among other things, to collect identifying information regarding the minor's ancestors, including "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, 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.” (§ 224.2, subd. (a)(5)(C).)

Following this inquiry, ICWA-compliant notice of the juvenile dependency proceedings involving the minor must be sent to various parties, including any potentially affected Indian tribes. (§§ 224.2, subd. (a)(5), 224.3, subd. (d).) Under California law, this notice must include the identifying information described above. (§ 224.2, subd. (a)(5).) Under federal law, the notice must include “[a]ll names known (including maiden, married, and former names or aliases) of the parents, the parents’ birthdates and birthplaces, and Tribal enrollment numbers if known” as well as “[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents.” (25 C.F.R. § 23.111(d)(2)-(3) (2017); see *id.*, § 23.111(a) (2017).)

The parties appear to agree that mother and J.R. provided sufficient information for CWS to have reason to know D.P. is an Indian child, thereby triggering the heightened inquiry and notice requirements. (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165; see *In re Andrew S.* (2016) 2 Cal.App.5th 536, 545, 547-548 (*Andrew S.*) [father’s initial statement he might “have Indian ancestry on his father’s side” was sufficient to trigger further inquiry].) The parties also agree that CWS made some effort to comply with these requirements, including sending notices to the identified Indian tribes and telephoning mother and J.R. to obtain Indian ancestry information. The issue here is whether CWS’s efforts were adequate. We review the juvenile court’s finding regarding the adequacy of the ICWA inquiry and

notice for substantial evidence.³ (See *In re J.T.* (2007) 154 Cal.App.4th 986, 991.)

We conclude, based on the current record, that substantial evidence does not support a finding that CWS's inquiry was adequate. (See *In re Breanna S.* (2017) 8 Cal.App.5th 636, 652; *In re Michael V.* (2016) 3 Cal.App.5th 225, 235-236 (*Michael V.*) CWS had an affirmative obligation to interview the parents and extended family members to discover the required identifying information. (§ 224.3, subd. (c).) CWS did not meet this obligation. Although case workers telephoned mother numerous times to inquire about her Indian ancestry, they did not interview her on the occasions when they did speak with her. These contacts occurred on February 22, March 16, March 17, March 22, March 30 and June 12. CWS fails to explain why the subject was not raised during these conversations.

In addition, with the exception of J.R., CWS made no effort to interview extended family members. Mother told CWS that she was the eldest of three siblings and that she maintained contact with her brothers. CWS did not request contact information for these siblings. Nor did it request contact information for Aunt Connie, who lived with mother when mother was a teenager. Mother also informed CWS that she was residing with her maternal grandfather, yet no attempt was

³ Mother's failure to object in the juvenile court to the deficiencies in the ICWA investigation and noticing does not preclude review of the issue on appeal. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 738-739 ["[W]here the notice requirements of [ICWA] were violated and the parents did not raise that claim in a timely fashion, the waiver doctrine cannot be invoked to bar consideration of the notice error on appeal"]; *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1267-1268 [same].)

made to contact him to try to discover maternal relatives' names, birthdates, dates of death, addresses or other information which could be included in the ICWA-030 notices to help trace D.P.'s Indian ancestry. (See *Michael V.*, *supra*, 3 Cal.App.5th at pp. 235-236.)

The record further reflects that CWS contacted three maternal relatives (V.V., G.S. and V.G.) about possible placement of D.P, but did not seek Indian ancestry information from these relatives. (See *Michael V.*, *supra*, 3 Cal.App.5th at pp. 235-236.) CWS also did not follow up with mother or any other relative when J.R., who is mother's cousin, informed case workers that J.R. has Cherokee heritage through her mother's side and that she was told by her cousin "Gilbert" that they have an aunt who resides on a Chumash reservation.

This case is similar to *Michael V.*, in which the Court of Appeal remanded the matter to the "juvenile court to direct the [social services agency] to conduct a meaningful investigation into [mother's] claim of Indian ancestry, including making genuine efforts to locate other family members who might have information bearing on the children's possible Indian ancestry." (*Michael V.*, *supra*, 3 Cal.App.5th at p. 236.) The court noted that the agency had "made no effort to locate the children's maternal grandmother to interview her even though it was she who reportedly had the direct link to a tribe. . . . Moreover, although [mother] said she had two siblings, the [agency] did not attempt to interview them, nor does it appear a social worker even asked [mother] their names or where they lived." (*Id.* at p. 235; see *Andrew S.*, *supra*, 2 Cal.App.5th at p. 548 [child protection agency failed to satisfy the duty of inquiry by failing to make any

effort to contact siblings or other extended family members to substantiate the father's belief he may have Indian ancestry[.]

CWS responds that any error in conducting the ICWA inquiry was harmless given that the Chumash and the Cherokee tribes received notice and determined that D.P. was not a tribal member or eligible for tribal membership. As mother points out, however, the ICWA notices that were sent to the tribes were incomplete. They included only basic information for D.P. and his parents. They did not include the names of his grandparents and great-grandparents, "as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known." (§ 224.2, subd. (a)(5)(C).) This is information that CWS may have discovered had it conducted a reasonable inquiry.

In sum, mother was "[a] person having an interest in the child . . . [who] provide[d] information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe." (§ 224.3, subd. (b)(1).) This disclosure triggered CWS's duty to seek more information from mother and her extended family, particularly after J.R. confirmed the possibility of Cherokee or Chumash Indian ancestry. (See *Andrew S.*, *supra*, 2 Cal.App.5th at pp. 547-548.) There is no substantial evidence that CWS satisfied this duty. As a result, the juvenile court's order must be conditionally reversed.

DISPOSITION

The order terminating parental rights is conditionally reversed. The matter is remanded to the juvenile court for full compliance with the inquiry and notice provisions of ICWA and

related California law. If, after proper inquiry, no additional information is uncovered, or if, after any necessary additional notice, no tribe intervenes, the order terminating parental rights shall be reinstated.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Lori Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant.

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