Filed 5/22/12 In re K.V. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.V. et al, Persons Coming Under the Juvenile Court Law.	B235607 (Los Angeles County Super. Ct. No. CK75951)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.V., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. Dismissed in part, reversed and remanded with directions.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

A.V., mother of now six-year-old K.V. and now five-year-old N.V., contends that the juvenile court erred when it denied her two Welfare and Institutions Code section 388[1] petitions without a hearing, denied a bonding study, altered her visitation with K.V. and N.V, and failed to find the beneficial parental relationship exception to the termination of parental rights in section 366.26, subdivision (c)(1)(B)(i) (section 366.26(c)(1)(b)(i)). Mother further contends that the juvenile court's finding that K.V. and N.V. were adoptable is not supported by substantial evidence, and the juvenile court failed to comply with the provisions of the Indian Child Welfare Act (ICWA or Act) (25 U.S.C. § 1901, et seq.). We dismiss as moot that part of mother's appeal challenging the juvenile court's orders altering mother's visitation with K.V. and N.V. Because the DCFS did not comply with the ICWA's inquiry requirements in section 224.3, we conditionally reverse the order terminating mother's parental rights and remand this case with directions to the juvenile court to ensure full compliance with the ICWA. We otherwise affirm the juvenile court's orders.

BACKGROUND

The following facts are taken from our May 23, 2011, opinion in Case No. B241322 that concerned mother's challenge to the juvenile court's order terminating reunification services and setting a section 366.26 hearing:

"On January 16, 2009, the DCFS filed a juvenile dependency petition under section 300, subd. (b), alleging, inter alia, that 'mother [of children K.V. and N.V.] is a current abuser of alcohol which renders the mother incapable of providing regular care for the children. [This] endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm and damage.'

---

1 All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

"On January 13, 2009, mother's 4-year old daughters K.V. and N.V. were removed from mother's custody based upon a referral alleging general neglect, ongoing alcohol abuse, and caregiver absence, incapacity and exposing children to a detrimental environment.

"There was evidence of alcohol abuse. There was also evidence that mother would leave the children unsupervised or in the care of their teenage paternal uncle, while she worked nights as a stripper. The children's aunt saw the uncle in the garage drinking beer, with drug paraphernalia. The children's aunt stated mother drank alcohol from the time she would awaken and drive intoxicated with the children in the car. Mother said she had to drink alcohol to perform her job as a stripper, but denied drinking was a problem. The mother's garage was filled with trash and bottles of alcohol. The mother would lock herself in her bedroom with her boyfriend and sleep. The children were dirty and hungry.

"On December 19, 2008, mother tested positive for hydrocodone (vicodin) for which she had a prescription. In 2003, the mother was arrested for having a methamphetamine lab in her maternal grandmother's home in Orange County, in violation of Health & Safety Code section 11379.6. The mother is on probation with the Orange County Probation Office for the 2003 arrest.

"Mother's husband and the children's father, M.V., was a member of a motorcycle gang, was arrested in September 2008 for possession of a controlled substance for sale, and is incarcerated in the California State Prison system. Father's expected release date is February 5, 2015.

"On April 15, 2009, mother entered into a mediation agreement that provided for the dependency petition to be amended and sustained as follows: 'The children's mother [A.V.] is a current user of alcohol to such a degree as to periodically interfere with her ability to provide appropriate care and supervision for the children. Mother's alcohol use places the children at risk of harm.'

"Mother agreed to the disposition case plan, which provided for: (1) a substance abuse program and after care program including Alcoholic's Anonymous (AA) with a

sponsor, (2) random drug and alcohol testing, (3) parenting classes, (4) individual counseling dealing with case issues, (5) DCFS to provide family reunification services, (6) the children to be suitably placed, and (7) mother to have monitored visits no less than twice a week. On May 5, 2009, the juvenile court adopted the mediation agreement, sustained the dependency petition, declared the children dependents of the court, and ordered reunification services, setting a progress hearing for August 5, 2009.

"On August 5, 2009, DCFS reported that mother was enrolled in Twin Palms Recovery Center, where she participated in a parenting course and individual counseling. Mother was visiting her daughters consistently, and the visits were going well. Mother's drug testing had resulted in 11 negative drug tests, 11 positive tests for opiates and hydrocodone, and one test positive for hydocodone only. On January 5, 2010, the Twin Palms Program Coordinator reported mother had attended 23 counseling sessions, 25 recovery discussion group sessions and 22 self help group sessions and needed one group session and four self help meetings to complete the program.

"On January 12, 2010, the juvenile court found mother in compliance with the court-ordered case plan, and ordered the children placed in the home of the mother, under DCFS supervision with family maintenance services. On April 13, 2010, DCFS reported concern for the children's well being because mother was not complying with the court's orders or following up with the safety plan she agreed to on January 6, 2010. The plan provided that mother would participate in family preservation, individual counseling, Alcoholic's Anonymous (AA) and random drug testing. Mother failed to attend the progress hearing on April 13, 2010 and to take scheduled drug tests on three occasions during January to March, 2010. On April 20, 2010, mother agreed that the children would remain with her and that she would contact the DPSS Liaison about her lack of compliance with her safety plan.

"Family preservation services were set up with an agency, but mother began cancelling appointments. On April 23, 2010, the agency terminated mother's family preservation services. Family preservation services were subsequently provided by another agency.

"On April 27, 2010, the court ordered mother to comply with the court's orders, cooperate with family preservation services, take the children to all medical appointments, and to continue random drug testing. On July 13, 2010, the DCFS reported that mother had not completed her individual counseling or her AA sessions.

"On September 14, 2010, the social worker was informed by the family preservation counselor that she had found the children unsupervised in the home. The counselor arrived for a scheduled visit at 8:50 am and found the mother and a male friend passed out in the mother's bed. The counselor called paramedics. The counselor believed mother was under the influence of a controlled substance because she was unable to speak properly.

"On September 15, 2010, the Sheriff's department received two calls that gun shots were heard from mother's house. The Deputy Sheriffs surrounded the house and called for the occupants to come out. Mother's boyfriend exited the house after 20 minutes. After another 10 minutes mother's roommate's boyfriend exited. Both men were intoxicated, and one had two live 357 bullets in his pocket. Both were active members of the Puente 13 gang. Mother and the children were in the house. The deputies entered and found a loaded 12 gauge shotgun on the floor. The mother and children were in another bedroom. A search uncovered a bag with eight tattoo machines and a loaded 357 revolver with one expended round. The tattoo machines and revolver had been burglarized from a tattoo shop that evening.

"The roommate told the deputies that she had driven the men to get laundry detergent and toilet paper, and she did not know they were going to rob anybody. She stated she drove the men to purchase the items and they told her to park in an alley behind the tattoo shop, which she did. They exited the vehicle and then returned a few minutes later and yelled 'Go Go Go get the ---- out of here!' In contradiction, she also told the deputies that mother was the driver of the car. After the men returned to mother's house from the burglary, one of other men pointed his pistol at the roommate and fired at least one round into the air.

"On September 24, 2010, mother was arrested by the Orange County Probation Department, with whom she was on probation for manufacturing methamphetamine. Mother violated her probation by having guns and stolen property in her home and associating with people on probation and parole.

"Mother acknowledged that the two men came to her house at about 6:30 p.m. and began drinking heavily until about 12 midnight, then left and returned with firearms, continued drinking, and shot the revolver in the backyard.

"On September 24, 2010 DCFS detained the children in a foster home. On September 27, 2010, mother tested positive for opiates. On September 29, 2010, DCFS filed a supplemental petition under section 387. The petition as amended alleged, 'S-1: On or about September 24, 2010, the children . . . mother, [A.V.] established a detrimental and endangering home environment for the children in that . . . firearms were found in the children's home. . . . Such a detrimental and endangering home environment established for the children by the mother potentially places the children at risk; and [¶] 'S-2: On September 16, 2010 the children . . . mother, [A.V.] . . . had a positive toxicology screen for opiates. . . . The mother's abuse of opiates . . . places the children at risk.'

"On September 29, 2010, the juvenile court held a hearing under section 387, and found that a prima facie case for detaining the minors under section 300, subdivision (b) was established, substantial danger existed to the physical or emotional health of the minors, and continuance in the mother's home was contrary to the children's welfare. The juvenile court modified the order for Home of Parent, (mother) dated January 12, 2010, and ordered that the minors be detained in shelter care. The court directed that DCFS was to look into placement of the children with either D.B. or the paternal great uncle, R.M., and set a progress hearing for October 18, 2010.

"Mother denied drug use other than vicodin for back pain and xanax for anxiety, denied involvement in the burglary of the tattoo shop, and denied that she was aware of stolen property and guns were in her home. On October 18, 2010, the court modified the

order for Home of Parent (mother) and placed the children with the paternal great uncle R.M.

"After mother's arrest on September 24, 2010, she was incarcerated for 45 days until she was released from jail on November 7, 2010. Mother also received an additional year of probation. The roommate wrote DCFS about mother, reporting that every night mother would 'party,' drink heavily, have different men over, and did not take care of the girls.

"On January 20, 2011, the social worker informed mother she had tested positive for drugs. Mother said she had taken Adderall by prescription. DCFS reported that mother had a positive test result for ecstasy (MDMA), and the social worker was informed that Adderall would not cause a positive test for ecstasy.

" On February 16, 2011, DCFS recommended that mother receive no additional reunification services and that the juvenile court set a section 366.26 hearing to terminate parental rights. At the February 16, 2011, hearing mother's attorney requested a continuance to retest mother's urine sample that had tested positive, which request the juvenile court denied.

"The juvenile court sustained count S-1 of the section 387 petition, as amended. Mother's attorney stated he wanted to argue about count S-1, and then asked that it be read to him. After the reading, the attorney stated he was in agreement with the S-1 language.

"The court sustained count S-2 as amended. The attorney stated, 'we do want to challenge that, but we will accept the language.' The court instructed the attorney he could either accept the language, in which case the court would sustain the count, or argue it. Counsel stated he would argue.

"Counsel argued mother's positive test result was caused by her use of vicodin, for which she had a prescription. DCFS stated that it was not disputing vicodin use would cause a positive for opiates, but said that at a hearing on August 5, 2009, the court told mother she needed to stop using vicodin. DCFS said the court also lectured mother on April 27, 2010, about her need to test 'clean.' DCFS argued the initial problem was

alcohol abuse, then a prescription for adderall, and then a positive test for ecstasy. DCFS said mother had an ongoing substance abuse problem and did not have a prescription for vicodin in September 2010. Mother's attorney argued mother had proof she had a prescription for vicodin and that vicodin and adderall were the only two drugs she had taken. Mother's attorney contended mother was told she could take prescription drugs.

"At the hearing, the juvenile court said it remembered telling mother to stop taking vicodin, and that it was normal to prohibit mothers from taking medication. The juvenile court noted there appeared to be a substantial danger to the children, mother had not complied with the case plan, and the recommendation was to terminate reunification services. The juvenile court reminded Mother's attorney that mother was arrested, violated probation, and spent time in jail. Mother had not completed everything in her case plan, and there was a risk to returning the children to her. The juvenile court stated it was sustaining the petition as amended and proceeded with setting the section 366.22 hearing. The section 366.26 hearing for a permanent plan for the children was scheduled for June 15, 2011."

The following facts concern events after the juvenile court's termination of reunification services:

The June 15, 2011, Status Review Report stated that K.V. and N.V. were having a difficult time processing feelings and had mixed feelings about mother. The children loved mother very much but were affected by the trauma they experienced while under her care. The children's therapist reported that the children had a positive relationship with their prospective adoptive parent, paternal great uncle R.M., with whom they had been placed on October 18, 2010. The children sought R.M. for comfort and support, and felt safe with him. R.M. and his partner, prospective adoptive parent F.D., were reported to have provided the children with a stable and loving home environment and to have ensured that the children's emotional and medical needs were met.

Mother continued to have monitored visits with the children. R.M. reported on several occasions that the children returned from visits confused and upset. The children told R.M. that they had been removed from mother's care because of paternal

grandmother, Martha V. When the children returned from the June 9, 2011, visit, they made several comments about what mother told them to say in court and about what to say about placement. R.M. reported that the visits were emotionally disturbing to the children and that K.V. had been having nightmares. R.M. stated that the children benefited from therapy, but the visits were counterproductive as the children regressed after them. The DCFS recommended that mother's visits be reduced to once a week and be monitored by a DCFS staff member.

In its June 15, 2011, Section 366.26 Report, the DCFS stated that K.V. and N.V. were adoptable and likely to be adopted. K.V. was healthy and had no medical or special needs. N.V. had been diagnosed with eczema, but had no other medical conditions. The children had lived together the majority of their lives, and had lived with R.M. and F.D. since October 18, 2010. R.M. and F.D. were very bonded with the children, showed a true concern for the children, were meeting the children's needs, and were committed to providing the children a permanent home. The children were reported to be comfortable and doing well in the home and to seek help from their prospective adoptive parents as needed. The adoption home study was not then complete. Although R.M. and F.D. had a weak relationship with mother, they understood that the children loved and needed mother and wanted the children to have a relationship with her.

The report stated that mother had monitored visits twice a week for four hours. The children had a good relationship with mother. The report noted that the children previously had been returned to mother's care but were removed when guns were found in the home. Father was in state prison in Florida.

At the June 15, 2011, hearing, the DCFS's counsel asked that mother's visits be monitored at the DCFS office. Mother objected to the juvenile court restricting mother's visits without notice and a "385 petition." Based on the reports it had read, the juvenile court ordered mother's visits to be "restricted" to a DCFS office with a DCFS-approved monitor. Mother's counsel inquired if the juvenile court was going to require the DCFS to file "a 385," arguing that mother's visits were being restricted based on allegations she had not had an opportunity to contest. The juvenile court responded that mother's visits

had not been "restricted," but "just changed." At mother's counsel's request, the juvenile court set the section 366.26 hearing for a contest on August 1, 2011.

The August 1, 2011, Interim Review Report stated that mother continued to have twice-weekly monitored visits with K.V. and N.V. Mother was appropriate and affectionate during visits. Mother normally fed the children and brought "activities" to interact with them during visits. Mother did not discuss case issues with the children during the visits. The children enjoyed the visits and appeared comfortable and happy. The social worker reported that the children had a strong bond with mother. The children told the social worker that they loved mother very much and would like to "go back home with her."

According to the report, R.M. reported, on July 19, 2011, that after a visit the children made comments such as "we have a secret; we're going back with mommy." K.V. told R.M. that mother had a lawyer and was going to fight for them. R.M. tried to obtain more information, but the children covered their ears and said they did not want to talk about it. The children's therapist was concerned because comments made during the visits confused the children and caused them emotional distress. The DCFS recommended that mother's visits be reduced due to the distress that the children were experiencing.

R.M. and F.D. were reported to be willing, at one time, to work with the Consortium for Children for a post-adoption agreement contract. However, the mediator reported on July 26, 2011, that after many discussions, R.M. and F.D. felt it was in the children's best interest that they not have contact with mother. The children appeared to be doing well in R.M.'s and F.D.'s home. R.M. and F.D. were bonded with the children and were committed to providing them a loving and permanent home.

In an August 1, 2011, Last Minute Information for the Court, the social worker informed the juvenile court that she had received a letter on July 29, 2011, from the children's therapist in which the therapist reported that "in our sessions following visits, the girls seemed very confused about the facts of their permanency planning and insisted that they would be going to live with their mother. While it's important for the girls to

know that their mother will always love them, this message creates more distress. This also prevents from working toward permanency with a healthy attachment to their uncle and his partner."

Also on July 29, 2011, the social worker received a telephone call from mother who stated that during a July 28, 2011, visit, K.V. told her that "[R.M.] said that you are a liar, that you break the law and [F.D.] said that your are a liar; they are tying [sic] to rip up apart." Mother said that R.M. told K.V. and N.V. that they were going to be with him forever. Mother further stated that K.V. told her she felt uncomfortable with the caregivers. Mother stated that if adoption remained the permanent plan, the caregivers would not allow her to visit the children, causing the children grief and sorrow as they had a strong bond with mother.

Attached to the last minute report was a letter from the children's therapist. The therapist stated that R.M. had been involved in the children's therapy. R.M. and F.D. had provided the children with a stable home environment, loving care, and a commitment to providing a healthy parenting approach. The children appeared to have a healthy bond with R.M. and F.D. In therapy sessions, the children frequently spoke fondly of F.D. and referred to R.M. as a source of comfort.

On August 1, 2011, mother filed two section 388 petitions that sought to change the February 16, 2011, order that terminated mother's reunification services with K.V. and N.V. The petitions alleged that the juvenile court should change its prior order because mother had substantially complied with and completed her case plan. According to mother, she had attended twice weekly Alcoholics Anonymous and Narcotics Anonymous meetings; participated in weekly individual counseling sessions; attended parenting classes; had a negative hair follicle test which, supporting documents claimed, demonstrated that she was not then under the influence of narcotics and had not been for the prior six months; had made substantial progress and learned a great deal; and had positive contact with the children during her limited visitation time.

The petitions asked that K.V. and N.V. be returned to mother's immediate care and custody. Alternatively, the petitions asked that family reunification services be

reinstated and increased, with mother to receive unmonitored visitation including weekend, holiday, and overnight visits with the children. The petitions further requested that the children be re-placed with maternal relatives. The petitions asked for a kinship adoption agreement, if necessary, so that mother could have continued contact with the children.

The petitions alleged that the requested changes would be better for K.V. and N.V. because there continued to be a strong and loving bond between mother and the children; mother was ready, willing, and able to provide a safe and loving home for the children; it was in the children's best interest to have a continuing relationship with mother—the social worker had stated that it would be detrimental for the children not to have contact with mother and the children would regress and be extremely distraught if denied contact with mother. According to the petitions, the social worker also had expressed concerns about the children's placement with R.M. and F.D. Attached to the petitions were mother's declaration and other documents in support of her requests. On August 1, 2011, the juvenile court denied the petitions without a hearing, finding that the petitions did not state new evidence or a change of circumstances, and that the proposed change of order did not promote the best interests of the children.

At the hearing on August 1, 2011, the juvenile court continued the section 366.26 hearing to September 13, 2011. Mother's attorney asked the juvenile court to order a bonding study between mother and the children. Mother's attorney contended that the children exhibited certain posttraumatic and anxious behaviors because they missed mother. Mother's attorney argued that it would be detrimental to the children "to make such a permanent decision" (apparently to terminate parental rights) without a bonding study. The juvenile court denied the bonding study as not being in the children's best interest.

The children's attorney requested that mother's visits be limited to twice a month. The attorney stated that mother apparently had been providing inappropriate information to the children during visits notwithstanding the presence of a DCFS monitor. The juvenile court did not alter the frequency of mother's visits, but did order that the monitor

not be more than six feet away from mother during visits. Mother's attorney did not object to the juvenile court's order.

The September 13, 2011, Interim Review Report stated that the DCFS had no concerns about the children's placement with R.M. and F.D. The children appeared to be well adjusted to their placement and had a bond and positive relationship with R.M. and F.D. R.M. and F.D. were addressing the children's needs through "appropriate supervision, nurturing, security, medical care and affection." The children appeared to be happy and comfortable in the home. The report noted that on June 15, 2011, the children told the social worker that they wanted to live with mother and did not want to live with R.M. and F.D.

The report stated that mother had been appropriate during visits with the children. Mother was affectionate and used proper parenting skills. The children appeared to be happy during the visits and to enjoy the time they spent with mother.

At the September 13, 2011, section 366.26 hearing, social worker Adriana Franco testified that she observed visits between mother and the children. Franco testified that mother's visits with K.V. were positive. Mother and K.V. interacted appropriately, played, and were affectionate. Mother provided the children with food at the visits, and mother and the children would hug, kiss, and say, "I love you." Mother was able to discipline the children. Between November 2010 and September 2011, mother visited the children regularly. Mother's visitation schedule during that period was twice a week for three hours. Mother had telephone contact with the children a few times a week. Franco believed that mother had a bond with the children.

K.V. testified that she loved mother, liked visiting mother, and wanted to continue to visit mother. K.V. testified that if she could live anywhere she wanted, she would live with her grandmother Martha. N.V. testified that she liked visiting mother and wanted to continue visiting her.

Mother testified that she did not believe that her parental rights should be terminated because she had a very close relationship and very strong bond with K.V. and N.V. Mother testified that the children came to her when they needed emotional or

physical support. The children looked to mother for advice or anything they needed to know. Mother visited with K.V. and N.V. about twice a week for two to four fours during the period from November 2010 to September 2011. On visits, mother provided the children with food and clothes. When mother arrived for visits, the children were happy to see her and would run and jump to her, hug her, kiss her, and tell her how much they missed her. At the end of visits, K.V. and N.V. would be "clingy" and would not want to let mother go. Mother testified that she spoke with K.V. and N.V. on the telephone five days a week for 10 to 15 minutes. On one of the visits, K.V. told mother that R.M. said that K.V. and N.V. were going to live with R.M. forever. K.V. was very sad when she told mother of that conversation.

During the time that K.V. and N.V. lived with mother after having been returned to mother's custody in 2010, mother did not observe the children experiencing anxiety, having nightmares, or having sleeping problems. Mother did not talk to the children about the case. Two of mother's other children were adopted.

Mother believed that the children would benefit if parental rights were not terminated because mother was the children's "stable foundation." Mother could meet the children's emotional and physical needs—whatever they wanted or needed. Mother could provide a mother's love, affection, and emotional stability.

Adoption social worker Rocio Hernandez testified that she observed positive interaction between mother and the children. The children were happy to see mother, and mother was affectionate. Mother brought food and "activities." Mother had a strong bond with the children. Hernandez also had seen R.M. and F.D. interact with the children. The caregivers were very nurturing, very affectionate, and very protective. The children had a strong bond with the caregivers and went to them when they needed something or had a problem at school. The children felt comfortable around the caregivers and were happy in their home.

Maternal grandmother Regina N. testified that she had been actively involved in the children's lives since birth. Regina N. regularly observed mother's interaction with the children. The children were exuberant when they saw mother at the beginning of

visits. Mother brought food and gifts to the visits. K.V. was crying and clinging after she saw mother and did not want mother to leave. According to Regina N., the children wanted to be with mother "24/7 on her lap."

Regina N. testified that mother had a strong bond with the children because the children would look for mother, ask for her, and run to her when she left the room. Since birth, Regina N. had seen mother bathe, love, nurture, play games with, and read stories to the children and tuck the children into bed.

R.M. testified that he did not monitor any of mother's visits with the children. R.M. was present when mother picked up the children. The children were excited to see mother. At first, the children had difficulty leaving mother after visits—there were a lot of hugs and kisses when mother dropped them off. After about a month, however, the children adjusted and, while there were still a lot of hugs and kisses, the children were "happy campers" when they left mother.

Initially when the children returned home from a visit, they were "a little bit down." After about a half an hour, the children would return to normal. The previous summer, however, things were said to the children during visits that seemed to distress them. Some nights after visits, the children had nightmares and would call for R.M. and want to be held by him. R.M. would go to their room and hold the children, staying with them until they fell asleep. Such behavior subsided "after the monitors got put back into the office."

According to R.M., mother telephoned K.V. and N.V. about two to three times a week on days she did not have visits with the children. The calls lasted from 10 to 30 minutes. R.M. monitored the calls and stated that mother was appropriate during the calls and the children enjoyed speaking with her.

During the time that K.V. and N.V. lived with R.M., mother never asked him how the girls were doing in his care or if they needed anything. Mother never offered to provide school supplies or other items for the children. Mother brought the children clothes at Christmas and near the time of the hearing. Mostly, mother brought toys to the

visits to make the visits happy and playful. R.M. sent mother a photograph of K.V. in her uniform on her first day of kindergarten. Mother was excited and thanked R.M.

Within the three months prior to the hearing, the children told R.M. that they loved mother very much, they missed her, and they wanted to live with her. According to R.M., the children's therapist and mother had told the children that they would not live with mother again. Asked if the children were upset about such information, R.M. responded, "Actually, not really. Not that much." The children continued to have anxiety. Recently, K.V. was acting out—testing R.M. by talking back to him and not doing what he asked her to do.

R.M. testified that he was willing to provide the children contact with mother if the juvenile court terminated mother's parental rights, stating, "I'm willing and of course, yeah. I can't do that to them. I can't cut them off." R.M. believed that it was the children's right and in their best interest to continue to have contact with mother and father. Because the children were used to seeing mother twice a week, R.M. believed it would be devastating to the children to cut them off from mother. R.M. believed that the door needed to remain open for mother to be in the children's lives.

DISCUSSION

I. The Juvenile Court Did Not Abuse Its Discretion When It Denied Mother's Two Section 388 Petitions Without A Hearing

Mother contends that the juvenile court abused its discretion when it denied her two section 388 petitions without a hearing. The juvenile court did not err.

A. Standard of Review

There is authority that we review the summary denial of a section 388 petition without an evidentiary hearing for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460.) Under an abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re*

Jasmine D. (2000) 78 Cal.App.4th 1339, 1351.) On the other hand, whether the petition stated a prima facie case sufficient to require a hearing may be reviewable de novo. Under either standard, the juvenile court did not err.

B. Application of Relevant Principles

Pursuant to section 388, a parent of a dependent child may petition the juvenile court "upon grounds of change of circumstance or new evidence . . . for a hearing to change, modify, or set aside any order of court previously made . . . ." (§ 388, subd. (a).) "[T]he change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1451.) The juvenile court shall order that a hearing be held if it appears that the child's best interests may be promoted by the proposed change of order. (§ 388, subd. (d).) The court may deny the section 388 petition ex parte—i.e., without a hearing—if the petition does not state a change of circumstance or new evidence that might require a change of order or fails to demonstrate that the requested modification would promote the child's best interest. (Cal. Rules of Court, rule 5.570(d).)

Section 388 petitions "are to be liberally construed in favor of granting a hearing to consider the parent's request. [Citations.] The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309–310.) "There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) The prima facie showing may be based on the facts in the petition and in the court file. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 463.) "The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

"Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability." (*In re Marilyn H., supra,* 5 Cal.4th at p. 309.) "It must be remembered that up until the time the section 366.26 hearing is set, the parent's interest in reunification is given precedence over the child's need for stability and permanency. This could be for a period as long as 18 months. Another four months may pass before the section 366.26 hearing is held. While this may not seem a long period of time to an adult, it can be a lifetime to a young child. Childhood does not wait for the parent to become adequate. (See *In re Micah S.* [(1988)] 198 Cal.App.3d [557,] 564-568 (conc. opn. of Brauer, J.).)" (*Id.* at p. 310.)

The section 300 petition was filed on January 16, 2009. Mother participated in reunification services and the children were returned to her on January 12, 2010. Mother had agreed to participate in family preservation, individual counseling, AA, and random drug testing. After the children were returned to mother, mother failed to live up to her agreement, missing tests and cancelling program appointments. On September 24, 2010, the children were again removed from mother's custody, and a section 387 petition was filed based on firearms being found in the children's home and mother's ongoing drug use. On February 16, 2011, the juvenile court sustained the section 387 petition, terminated mother's reunification services, and set the matter for a section 366.26 hearing. On August 1, 2011, the date set for the section 366.26 hearing, mother filed her section 388 petitions. The juvenile court denied the petitions without a hearing, and continued the section 366.26 hearing to September 13, 2011.

To establish a prima facie case, the petitioner must allege facts that, if supported by evidence at a hearing, would sustain a favorable decision on the petition. (*In re Zachary G., supra,* 77 Cal.App.4th at p. 806.) Neither of mother's petitions states a prima facie case. The change in circumstances alleged in the petitions was mother's purported substantial compliance with her case plan. The children allegedly would benefit if mother was given custody of them or if the children were placed with a maternal relative and mother was given reunification services because mother and the children had a strong bond and the children would suffer if denied contact with mother.

Assuming that the evidence supported mother's claim that she had substantially complied with her case plan, mother's ongoing participation in the case plan was not a change of circumstances of such a "significant nature" that it required the juvenile court to set aside the juvenile court's order terminating reunification services. (*Ansley v. Superior Court, supra,* 185 Cal.App.3d at p. 485.) Mother previously had participated in reunification services and was reunited with her children only to later engage in the behavior that caused the DCFS to again detain the children. Also, the proposed changes do not support the proposition that they are in the children's best interest. Although K.V. and N.V. loved mother, had a strong bond with her, and wanted to live with her, the children also were bonded with R.M. and F.D. and doing well in R.M.'s and F.D.'s home. At the posttermination of reunification services stage of the case, the focus was on K.V.'s and N.V.'s need for permanency and stability. (*In re Marilyn H., supra,* 5 Cal.4th at p. 309.) The juvenile court could conclude that it was not in the children's interest to give up the stability in R.M.'s and F.D.'s home and their potential adoption by R.M. and F.D. to provide mother another opportunity to become an adequate parent. (*Id.* at p. 310.) Accordingly, the juvenile court did not err in denying mother's section 388 petitions without a hearing.

II. The Juvenile Court Acted Within Its Discretion When It Denied Mother A Bonding Study

Mother contends that the juvenile court abused its discretion when it denied her request for a bonding study. We disagree.

A. Standard of Review

We review for abuse of discretion an order denying a request for appointment of an expert under Evidence Code section 730[2] to perform a bonding study. (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1197; *In re Steven A.* (1993) 15 Cal.App.4th 754, 763; *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084.) As noted above, a juvenile court abuses its discretion when it makes an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1351; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

B. Application of Relevant Principles

"There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order." (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) "Bonding studies after the termination of reunification services would frequently require delays in permanency planning. Similar requests to acquire additional evidence in support of a parent's claim under section 366.26, subdivision (c)(1)(A) could be asserted in nearly every dependency proceeding where the parent has maintained some contact with the child. The Legislature did not contemplate such last-minute efforts to put off permanent placement. (*In re Marilyn H., supra,* 5 Cal.4th at p. 310 ['lengthy and unnecessary delay in providing permanency for children' is 'the very evil the Legislature intended to correct'].) While it is not beyond the juvenile court's discretion to order a bonding study late in the process under compelling circumstances, the denial of a belated request for such a study is fully consistent with the scheme of the dependency statutes, and with due process." (*In re Richard C., supra,* 68 Cal.App.4th at p. 1197, fn. omitted.)

---

[2] Evidence Code section 730 provides, in relevant part, "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required."

On August 1, 2011, mother's attorney asked the juvenile court to order a bonding study between mother and the children. Mother's attorney claimed that the children exhibited certain posttraumatic and anxious behaviors because they missed mother, and that it would be detrimental to the children to terminate parental rights without a bonding study. The juvenile court found that a bonding study was not in the children's best interest and denied the request. The juvenile court acted within its discretion. The juvenile court terminated mother's reunification services on February 16, 2011. Thus, by the time that mother's attorney requested a bonding study on August 1, 2011, the juvenile court had long since terminated reunification services and set the matter for a section 366.26 hearing. "[T]he denial of a belated request for . . . a [bonding] study is fully consistent with the scheme of the dependency statutes, and with due process." (*In re Richard C., supra,* 68 Cal.App.4th at p. 1197.) Moreover, a bonding study was unnecessary as the juvenile court had in the reports before it ample evidence concerning the children's bond with mother—the June 15, 2011, Status Review Report stated that the children loved mother very much; the June 15, 2011, Section 366.26 Report, stated that the children had a good relationship with mother; and the August 1, 2011, Interim Review Report stated that mother was appropriate and affectionate during her twice-weekly visits with the children, the children enjoyed the visits and appeared comfortable and happy, the children had a "strong bond" with mother, and the children told the social worker that they loved mother very much and would like to "go back home with her."

III. Mother's Contentions Concerning The Juvenile Court's Orders Altering The Terms Of Mother's Visitation With K.V. And N.V. Are Moot

Mother contends that the juvenile court erred when it ordered, on June 15, 2011, that mother's visits with K.V. and N.V. take place at a DCFS office with a DCFS-approved monitor, and when it ordered, on August 1, 2011, that a monitor not be more than six feet away from mother during visits. The DCFS argues that mother's contentions are moot based on the juvenile court's subsequent finding that visitation between mother and the children had been detrimental to the children, and the juvenile

court's order that mother's visits with the children were to take place in a therapeutic setting and mother's visitation with K.V. and N.V. was to cease on April 30, 2012.[3]

"As a general rule, an appellate court only decides actual controversies. It is not the function of the appellate court to render opinions '"""upon moot questions or abstract propositions, or . . . declare principles or rules of law which cannot affect the matter in issue in the case before it."""' [Citation.] '[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief. [Citation.]' [Citation.]" (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1380.) Thus, "'[a]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.' [Citation.]" (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

The juvenile court's March 27, 2012, finding that mother's visits with K.V. and N.V. were detrimental to the children and its order that mother's visits with the children cease on April 30, 2012, rendered moot mother's challenge to the juvenile court's June 15 and August 1, 2011, orders altering the terms of mother's visitation. Accordingly, we dismiss this part of mother's appeal as moot.

IV. Substantial Evidence Supports The Juvenile Court's Finding That The Children Were Adoptable

Mother contends that the juvenile court's finding that K.V. and N.V. were adoptable is not supported by substantial evidence. Substantial evidence supports the juvenile court's finding.

A. Standard of Review

We review a juvenile court's finding on adoptability for substantial evidence. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) "[W]e view the evidence in the light

---

[3] We grant the DCFS's motion for judicial notice of the juvenile court's March 27, 2012, minute order.

most favorable to the trial court's order, drawing every reasonable inference and resolving all conflicts in support of the judgment. [Citation.]" (*Ibid.*) We do not reweigh the evidence. (*Ibid.*)

B. Application of Relevant Principles

Whether a child is adoptable is a determination a juvenile court makes at a section 366.26 hearing. (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) A determination of adoptability must be made based on clear and convincing evidence. (*Ibid.*) In deciding adoptability, the juvenile court "focuses on *the child*—whether his age, physical condition and emotional state make it difficult to find a person willing to adopt him. [Citation.]" (*Ibid.*) "To be considered adoptable, a minor need not be in a prospective adoptive home and there need not be a prospective adoptive parent '"waiting in the wings."' (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, 28 Cal.Rptr.2d 82.) Nevertheless, 'the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*' (*Id.* at pp. 1649-1650.)" (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

"If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844 [16 Cal.Rptr.2d 766].) When the child is deemed adoptable based solely on a particular family's willingness to adopt the child, the trial court must determine whether there is a legal impediment to adoption. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061 [27 Cal.Rptr.3d 612].)" (*In re Valerie W.* (2008) 162 Cal.App.4th 1, 13.)

Mother contends that because the children shared an emotional bond with her and were distressed at losing her through adoption, the children's emotional states would make it difficult to find persons willing to adopt them. Because the children thus were

not generally adoptable, mother argues, they could be deemed adoptable only if there were no legal impediments to adoption by R.M. Mother contends that the children were not adoptable, notwithstanding R.M.'s willingness to adopt them, apparently because R.M.'s purported antipathy to post-adoption contact between the children and mother was a legal impediment to adoption. Mother is mistaken.

There is substantial evidence that the children were generally adoptable. The adoption social worker opined in the June 15, 2011, Section 366.26 Report that K.V. and N.V. were adoptable and that it was likely that they would be adopted. K.V. was reported to be healthy and without medical or special needs. N.V. had been diagnosed with eczema, but did not have any other medical conditions. Both children were enrolled in preschool. At the section 366.26 hearing, mother's counsel argued that the juvenile court could not find clear and convincing evidence of adoptability due to the children's emotional attachment to mother, but acknowledged that, "As far as the adoptability issue, I understand these children are extremely beautiful children, and their demeanor on the stand, I think, exhibits two beautiful children that people would want and would want to adopt . . . ." The children may have had emotional issues in connection with their adoption that manifested through nightmares, anxiety, and, in K.V.'s case, defiant behavior, but such emotional issues did not necessarily rise to a level that made the children not generally adoptable.

Assuming the children were not generally adoptable, mother fails to identify a legal impediment that would prevent R.M.'s adoption of the children. The legal impediment that mother identifies is R.M.'s purported antipathy to continued contact between the children and mother after adoption. Mother cites no authority for the proposition that a prospective adoptive parent's antipathy to post-adoption contact between a child and the child's birth parent is a legal impediment to adoption. The legal impediments to adoption are found in Family Code sections 8601, 8602, and 8603. (*In re G.M.* (2010) 181 Cal.App.4th 552, 560-561 & fn. 2; *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061 ["Family Code sections 8601, 8602, and 8603 respectively provide that a prospective adoptive parent must be at least 10 years older than a child unless certain

exceptions apply, a child older than 12 must consent to adoption, and a prospective adoptive parent not lawfully separated from a spouse must obtain consent from the spouse"].) Antipathy to post-adoption contact is not a legal impediment identified in the Family Code. Even if antipathy to post-adoption contact were a legal impediment to adoption, however, the record does not support mother's assertion that R.M. was unwilling to allow the children post-adoption contact with mother. At the section 366.26 hearing, R.M. testified that he was willing to provide the children post-adoption contact with mother, stating, "I'm willing and of course, yeah. I can't do that to them. I can't cut them off." R.M. believed that it was the children's right and in their best interest to continue to have contact with mother.

V. The Juvenile Court Properly Found That The Section 366.26(c)(1)(B)(i) Beneficial Parental Relationship Exception To The Termination Of Parental Rights Did Not Apply

Mother contends that the juvenile court erred in finding that the beneficial parental relationship exception to the termination of parental rights in section 366.26(c)(1)(B)(i) did not apply. The juvenile court did not err.

A. Standard of Review

Some courts have held that challenges on appeal to a juvenile court's determination under section 366.26(c)(1)(B)(i) are governed by a substantial evidence standard of review. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 & fn. 4.) Under a substantial evidence standard of review "'"the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.' [Citation.]" (*Bickel v. City of*

Piedmont (1997) 16 Cal.4th 1040, 1053, abrogated on other grounds as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D., supra,* 70 Cal.App.4th at pp. 52-53.)

Other courts have applied an abuse of discretion standard of review. (See, e.g., *In re Jasmine D., supra,* 78 Cal.App.4th at p. 1351; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) As noted above, under an abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1351.) In this case, we need not decide whether a juvenile court's ruling on the section 366.26(c)(1)(B)(i) exception is reviewed for substantial evidence or abuse of discretion, because, under either standard we affirm the juvenile court's decision.

B. Application of Relevant Principles

Once a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, parental rights may be terminated unless the court finds a compelling reason for determining that doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R.* (2003) 31 Cal.4th 45, 52-54.) These "exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*Id.* at p. 53; *In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350 ["Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement"].)

The beneficial parental relationship exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if the parent has "maintained regular visitation and contact with the child and the child would

benefit from continuing the relationship." Application of the beneficial parental relationship exception consists of a two-prong analysis. (*In re Aaliyah R., supra,* 136 Cal.App.4th at pp. 449-450.) The first is whether there has been regular visitation and contact between the parent and child. (*Id.* at p. 450.) The second is whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from its termination. (*Ibid.*)

The parent/child relationship must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

The beneficial parental relationship exception does not apply when a parent fails to occupy a parental role in his or her child's life. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) To establish the beneficial parental relationship exception, "the parents must do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]" (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A relationship sufficient to support the beneficial parental relationship exception "aris[es] from day-to-day interaction, companionship and shared experiences." (*In re Casey D., supra,* 70 Cal.App.4th at p. 51.)

Whether the exception applies is determined "on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H., supra,* 27

Cal.App.4th at p. 576.) A parent must show that he or she has maintained regular visitation and contact with the child and that a benefit to the child would result from continuing the relationship. (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 821; *In re Zachary G., supra,* 77 Cal.App.4th at p. 809.)

The juvenile court rejected mother's contention that the beneficial parental relationship exception to the termination of parental rights applied. The juvenile court found that mother met the first prong of the exception by showing that she had regular visitation and contact with K.V. and N.V., but she did not meet the second prong by showing that the benefit the children received from their relationship with mother outweighed the benefit they would receive from adoption by R.M. and F.D. Substantial evidence supports the juvenile court's finding that mother did not meet the second prong.

As to the second prong, the record demonstrates that mother and the children loved each other and had a strong bond, mother was appropriate in her monitored visits, the children enjoyed visiting with mother, and, at times, the children expressed a desire to live with mother. At the same time, however, there is evidence that the children had a strong bond with R.M. and F.D., the children were well adjusted to and happy in their placement with R.M. and F.D., and R.M. and F.D. provided the children with a stable and loving home environment and ensured that the children's emotional and medical needs were met. As to the detriment K.V. and N.V. would suffer if mother's parental rights were terminated, R.M. testified that the children were not really upset when informed that they would not live with mother again. Also, there was evidence that the children's emotional issues arose not because they missed mother, but because of inappropriate statements mother made during visits. Thus, although there was evidence that mother and the children had a positive relationship, mother failed to show that termination of her parental rights would cause the children great harm. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575.) There was substantial evidence that mother did not show that exceptional circumstances existed to justify the juvenile court choosing an option other than adoption. Accordingly, the juvenile court did not err in finding that the beneficial parental relationship exception did not apply. (*In re Celine R., supra,* 31 Cal.4th at p. 53;

In re Jasmine D., supra, 78 Cal.App.4th at p. 1350 [it is only in an extraordinary case that the preservation of a parent's rights will prevail over the preference for adoption].)

VI. ICWA Compliance

Mother contends that the juvenile court erred when it found that the ICWA did not apply. The DCFS agrees as do we.

A. Background

On December 18, 2008, mother informed the DCFS that there might be Native American ancestry on the maternal and paternal sides of the family, but that she did not have further information. On January 16, 2009, the juvenile court ordered the DCFS to investigate mother's claim of Native American ancestry.

The March 2, 2009, Jurisdiction/Disposition Report stated that the DCFS had interviewed mother on February 17, 2009, and mother was unable to provide any additional information about her claim of Native American ancestry. The report stated that the DCFS interviewed maternal grandmother on February 24, 2009. Maternal grandmother stated that the maternal great grandparents were of Native American ancestry, which ancestry included the Apache and Sioux tribes. Maternal grandmother stated that she was in the process of obtaining the names, birth dates, and contact information of the relatives who were of Native American ancestry. On February 19, 2009, paternal grandmother told the DCFS that father was not of Native American ancestry.

In its August 5, 2009, Interim Review Report, the DCFS reported that the ICWA did not apply. The DCFS did not provide the basis for that determination. At the August 5, 2009, hearing, counsel for the DCFS stated, "I did have one other cleanup issue. [¶] At the detention hearing, there was some possibility of ICWA that was back in January. I believe after that, the Department did follow up, and based on what's in the reports, the jurisdiction report, it should not be considered an ICWA case." Counsel for the DCFS asked the juvenile court to find that this case was not an ICWA case. The juvenile court

stated, "All right. At this time, the court is going to find this is not an ICWA case. I have no reason to know."

The September 29, 2009, Jurisdiction/Disposition Report stated that a social worker followed up on the juvenile court's August 5, 2009, finding that this was not an ICWA case by asking maternal great grandmother on August 18, 2009, if she had any Native America ancestry. Maternal great grandmother stated that her father was from Chihuahua, Mexico, and her mother was from Torreon, Mexico. The report does not contain information about whether maternal great grandfather had Native American ancestry.

B. Application of Relevant Principles

Section 224.3, subdivision (a)[4] imposes upon the juvenile court and the DCFS a continuing duty to inquire if a child in dependency proceedings has or may have Native American ancestry. When the DCFS knows or has reason to know that a Native American child is involved in dependency proceedings, section 224.3, subdivision (c)[5] requires the DCFS to make further inquiry about the child's ancestry, including interviewing extended family members.

---

[4] Section 224.3, subdivision (a) provides, "The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care."

[5] Section 224.3, subdivision (c) provides, "If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make 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 to gather the information required in paragraph (5) of subdivision (a) of Section 224.2, contacting the Bureau of Indian Affairs 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."

The DCFS properly concedes that the juvenile court's August 5, 2009, finding that this was not an ICWA case was error. Mother claimed Native American ancestry on her side of the family. Maternal grandmother stated that the maternal great grandparents had Native American ancestry, identifying the Apache and Sioux tribes. The DCFS failed to investigate fully these claims of Native American ancestry. Although the record reflects that the DCFS investigated the claim that maternal great grandmother had Native American ancestry—after the juvenile court found that this was not an ICWA case—there is no information concerning a like inquiry concerning maternal great grandfather. Because the DCFS did not comply with the ICWA inquiry provisions under section 224.3, we conditionally reverse the order terminating mother's parental rights and remand this case with directions to the juvenile court to ensure full compliance with the ICWA.

DISPOSITION

The part of mother's appeal challenging the juvenile court's orders altering mother's visitation with K.V. and N.V. is dismissed as moot. The order terminating mother's parental rights is conditionally reversed. The matter is remanded to the juvenile court for the limited purpose of ensuring compliance with the ICWA. The DCFS is to conduct further inquiry into whether K.V. and N.V. have Native American ancestry and to further comply with the ICWA as appropriate. If after such inquiry, the juvenile court determines that K.V. and N.V. do not have Native American ancestry, then the juvenile court shall reinstate the order terminating mother's parental rights to K.V. and N.V., and may proceed accordingly.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.