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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re JU.R., et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B239790 (Super. Ct. Nos. J1286193, J1286194, J1286195) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD PROTECTIVE SERVICES, Plaintiff and Respondent, v. J.R., Defendant and Appellant.	

J.R. (mother) appeals the juvenile court's order terminating parental rights and selecting adoption as the permanent plan for her minor children M.R. and Je.R., and placing her child Ju.R. into long-term foster care[1] (Welf. & Inst. Code, § 366.26 et seq.) Mother contends that respondent Santa Barbara County Child Welfare Services (CWS)

[1] Consistent with the objective of protecting their anonymity, the two children with the same initials are referred to by the first two letters of their first name along with the initial of their last name. (Cal. Rules of Court, rule 8.401(a)(2).)

failed to comply with the notification requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm.

FACTS AND PROCEDURAL HISTORY

On July 29, 2009, 10-year-old Ju.R. and 4-year-old twins M.R. and Je.R. were taken into custody after Je.R. reported that she had been sexually abused by her 11-year-old brother N.R.[2] At the detention hearing held on August 3, 2009, mother stated that she did not have any Indian heritage. The maternal grandmother, who was also present at the hearing, told the court there was Cherokee heritage "on [her] mother's side of the family" and added, "when I inquired with [*sic*] my mother way before she [died], my mother said that by the time it got to me it is, like, very small." When mother subsequently completed form ICWA-20 (parental notification of Indian status), she checked the box indicating that she may have Indian ancestry and wrote "Cherokee - Oklahoma/Texas."[3] CWS subsequently spoke with the maternal grandmother, who provided further information regarding the children's possible Indian heritage.

On August 7, 2009, CWS mailed notice of the custody proceedings (form ICWA-30) on behalf of all three children to the Bureau of Indian Affairs (BIA) and the three federally recognized Cherokee Indian tribes (the Cherokee Nation, the United Keetowah Band of Cherokee Indians, and the Eastern Band of Cherokee Indians). The notices provided, inter alia, the names of the maternal grandmother and maternal great-grandmother along with their dates and places of birth. In the section provided for other relative information, CWS included the names of the children's maternal great-great-grandmother and great-great-grandfather. The notices further indicated that no further information was available regarding these relatives.

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[2] N.R. was not detained and is not a subject of these proceedings.

[3] The detention report states that mother told the social worker that neither she nor the children's father, J.R., had any Indian ancestry. The social worker reported that she was unable to make any inquiry of J.R. because his whereabouts were unknown. J.R. did not participate in the dependency proceedings and is not a party to this appeal.

Return receipts signed by the tribes were filed on December 14, 2009. The BIA responded that no further action was required and that appropriate notice had been provided to the tribes. All three Cherokee tribes responded that Ju.R., M.R., and Je.R were not Indian children and that the tribes did not intend to intervene in the proceedings. The court subsequently found that the ICWA did not apply with regard to any of the children.

Appellant was granted 18 months of family reunification services while the children were placed in foster care. At the 18-month review hearing, CWS recommended that services be terminated on the ground that mother had not made substantial progress with her case plan and had not consistently demonstrated her acceptance of Je.R.'s claims of sexual abuse. Services were terminated on April 5, 2011, and the matter was set for a permanency planning hearing. At the conclusion of that hearing, the court terminated mother's parental rights as to Je.R. and M.R. and placed Ju.R. in long-term foster care with a goal of legal guardianship. This appeal followed.

DISCUSSION

Mother contends the order terminating her parental rights as to Je.R. and M.R. and placing Ju.R. in long-term foster care must be reversed because the juvenile court erred in determining the ICWA did not apply. We disagree.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. § 1901 et seq.) "The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource. [Citation.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) The juvenile court and social services agencies have a duty to inquire at the outset of the proceedings whether a child subject thereto is, or may be, an Indian child. (*Id.* at p. 470.)

The duty to provide notice under the ICWA arises when "the court knows or has reason to know that an Indian child is involved . . . ." (25 U.S.C. § 1912(a).) An "Indian child" is one who is either a "member of an Indian tribe or . . . eligible for

membership in an Indian tribe and is the biological child of a member of an Indian tribe." (*Id*. at § 1903(4).) The notices "must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) "It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*Ibid.*; *In re C.D.* (2003) 110 Cal.App.4th 214, 224–225.)

We review compliance with the ICWA under the harmless error standard. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402–403.) Notice is sufficient if there was substantial compliance with the applicable provisions of the ICWA. (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 566.)

Mother asserts that the notices sent to the Cherokee tribes were incomplete because they did not include any information regarding the maternal grandfather. She further complains that "[a]lthough at least [the] maternal grandfather was also available to interview, it appears from the record that no ICWA inquiry was made of him." We conclude that any error in this regard was harmless because mother claimed Indian heritage through her mother, not her father. (See *In re Cheyanne F*. (2008) 164 Cal.App.4th 571, 575–578 [absence of information regarding parent who does not claim Indian heritage is subject to harmless error analysis].) Mother fails to explain how information regarding the maternal grandfather's heritage might have assisted the noticed tribes in determining whether the children were eligible for membership. (*Ibid.*)

Mother also argues that the notices were defective to the extent they did not include her place of birth. Although this information was readily available and should have been included, the notices did include the names and dates and places of birth of the maternal grandmother and maternal great-grandmother, the ancestors through whom the

children's Indian heritage was claimed. Accordingly, the failure to include the mother's place of birth was harmless. (*In re D.W.* (2011) 193 Cal.App.4th 413, 418 [any error in incorrectly spelling the first name of parental grandmother who claimed Indian heritage deemed harmless where ICWA notice contained the correct names, birth dates, and birth places of her mother and father].)

Mother's reliance on *In re A.G.* (2012) 204 Cal.App.4th 1390, is unavailing. The ICWA notices in that case merely included the mother's name and birth date, the father's name, former address and birth date, and the paternal grandmother's name and address. (*Id.* at p. 1397.) The record was also devoid of any evidence that the social services agency had followed up on the father's representation that he was gathering additional information regarding his claimed tribal affiliation. Moreover, the agency conceded that the ICWA notices were insufficient. (*Ibid.*) No similar circumstances are present here.

Mother's citation to *In re Francisco W., supra*, 139 Cal.App.4th 695, is similarly misplaced. The father in that case claimed possible Cherokee heritage, and the paternal grandmother made herself available to the social services agency. The agency conceded that the ICWA notices it sent were insufficient, due at least in part to the fact that no inquiry had been made of the paternal grandmother. (*Id.* at pp. 703-704.) The agency's concession was well taken because it was clear that the paternal grandmother may have been able to provide information to support her son's claim of Indian heritage. As we have already explained, in this case there has been no showing that information regarding the maternal grandfather's heritage might have assisted the noticed tribes in

determining whether the children were eligible for membership.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy County Counsel, for Plaintiff and Respondent.