Filed 1/3/18 In re B.S. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.S., a Person Coming Under the Juvenile Court Law.	2d Juv. B282603 (Super. Ct. No. J070428) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. N.F. et al., Defendants and Appellants.	

N.F. (Mother) and M.M. (Father) appeal an order terminating parental rights to their son, B. (Welf. & Inst. Code,[1] § 366.26.) Father also appeals an order denying his request to

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

continue the matter to be heard with the case of B.'s half sister, G.

Mother and Father contend the trial court erred when it found that the Indian Child Welfare Act (ICWA) did not apply. (25 U.S.C. § 1901 et seq.) And Father contends that if ICWA applies the court should hear B.'s case with G.'s case to decide if the sibling relationship exception applies. We take judicial notice of the ICWA notices and responses provided while this appeal was pending, conclude the appeal is moot, and affirm the orders.

FACTUAL AND PROCEDURAL HISTORY

Ventura County Human Services Agency (HSA) removed B. from his parents' home due to Father's physical abuse and Mother's inability to protect him, among other things. The trial court bypassed services. B. was eventually placed in a foster family with his half sibling, G., where he remains.

Mother informed the court that she may have Chumash and Cherokee ancestry, but HSA did not provide notice to the Chumash tribe. The trial court relied on a finding in B.'s prior case, in which Mother disclosed only Cherokee ancestry and the Cherokee tribe reported that B. was ineligible for enrollment. It found ICWA did not apply.

HSA recommended termination of parental rights and a permanent plan of adoption with the foster family for both B., and G. (in her case). The cases were set together for contested section 366.26 hearings.

G.'s case was continued to allow counsel to review a supplemental report. The court denied Mother and Father's request to continue B.'s case because they did not show good

cause. Neither parent asserted that the sibling exception applied.

After an evidentiary hearing, the court found B. is adoptable, and no exceptions apply. It terminated Mother and Father's parental rights to B. Mother and Father appealed.

Upon receipt of Mother's opening brief, HSA gave notice to the Chumash Tribe and to the Tejon Indian Tribe. Both tribes responded that B. is not a member and not eligible to enroll. The trial court reappointed counsel for Mother and Father, conducted a hearing, and concluded that notice was given as required and ICWA does not apply.

DISCUSSION

ICWA Compliance While Appeal Pending

If the trial court knows or has reason to know that an Indian child is involved in a dependency proceeding, notice of the proceeding must be given to the relevant tribes. (25 U.S.C. § 1912(a); § 224.2, subd. (a); *In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) Here, the original notice was defective because it was not sent to the Chumash tribe. Where a defect in ICWA notice is raised for the first time on appeal, the defect may be cured while the appeal is pending. (*In re C.D.* (2003) 110 Cal.App.4th 214, 224.)

HSA requests judicial notice of the trial court's postjudgment order finding that ICWA does not apply. It asks us to augment the record to include the order and other postjudgment trial court records including HSA memoranda, a declaration, notices to the Chumash and Tejon tribes, and the tribes' written responses. Mother and Father object on the grounds that reviewing courts should generally not take judicial notice of evidence that was not before the trial court; that we may take judicial notice of the existence of another court's order but

not its factual findings; that the juvenile court lacked jurisdiction to rule on the ICWA issue after it terminated parental rights; and that augmentation may not be used to address matters that occurred during the appeal. (*In re K.M.* (2015) 242 Cal.App.4th 450, 453.)

These objections do not prevent our consideration of the cured notice and the tribes' responses. We may take judicial notice of postjudgment records in exceptional circumstances like these in order to assess whether ICWA compliance has rendered an appeal moot. (*In re C.D.*, *supra*, 110 Cal.App.4th at p. 224; *In re Z.N.* (2009) 181 Cal.App.4th 282, 299, fn. 4.) And we may take additional evidence and make factual determinations in the interests of justice when "causes may be finally disposed of by a single appeal and without further proceedings in the trial court." (Code Civ. Proc., § 909; Cal. Rules of Court, rule 8.252(c)(2), (3); *In re K.M.*, *supra*, 242 Cal.App.4th at p. 456.)

The notices and tribal responses establish that HSA has now complied with ICWA notice requirements and that ICWA does not apply. The state has a strong interest in expediting proceedings and promoting finality of juvenile dependency proceedings. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676; *In re Zeth S.* (2003) 31 Cal.4th 396, 412-413.) HSA promptly cured the notice defect when Mother raised it in her opening brief, and the tribes' responses are unequivocal.

Because B. is not an Indian child, his placement with G. will remain undisturbed, and Father's claim that the sibling exception may apply is moot.

DISPOSITION

We grant HSA's request for judicial notice of: (1) the proof of notice of these proceedings by certified mail to the Santa

Ynez Band of Chumash Tribe and the Tejon Indian Tribe (attached as Exhibit A, pages 3-21 and Exhibit B, pages 8-9 to the request); and (2) the responses of the tribes (attached as Exhibit B, pages 3-6, to the request). We otherwise deny the request for judicial notice and augmentation.

The orders are affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Andre F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant N.F.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant M.M.

Leroy Smith, County Counsel, Alison L. Harris, Assistant County Counsel, for Plaintiff and Respondent.