Filed 3/6/17 In re Christian L.CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Christian L. et al., Persons Coming Under the Juvenile Court Law.	B269262 (Los Angeles County Super. Ct. No. DK01118)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ANTHONY F., Objector and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Emma Castro, Judge. Reversed and remanded.

Suzanne Davidson, under appointment by the Court of Appeal, for Objector and Appellant.

Mary C. Wickham, County Counsel and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

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In this juvenile dependency case, the juvenile court gave notice to the Bureau of Indian Affairs when one parent reported her possible Indian ancestry with an "unknown tribe"; however, when that parent later identified a specific Indian tribe, the court did not give notice to that specific tribe. The other parent argues in this appeal that this was error under the federal Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.). The Los Angeles County Department of Children and Family Services (Department) concedes this was error. We agree. Accordingly, we conditionally remand this matter to the juvenile court to give the appropriate notice.

FACTS AND PROCEDURAL BACKGROUND

Crystal F. (mother) and Anthony F. (father) have one child together; mother has two older children by another man. In March 2014, the Riverside Department of Child Protective Services (Riverside Department) filed a petition with the Riverside County juvenile court, asking it to exercise dependency jurisdiction over all three children due to the parents' criminal histories, their domestic violence, and mother's substance abuse and mental health issues. In the course of those proceedings, mother informed the court that she may have Indian ancestry with an "unknown tribe" through "maternal relatives." The Riverside Department gave notice of the children's possible ancestry to the Bureau of Indian Affairs, which reported no record of Indian ancestry. The Riverside juvenile court thereafter found that ICWA did not apply.

The case was then transferred to Los Angeles County. At the first hearing before the Los Angeles County juvenile court, the court inquired into the children's possible Indian ancestry. Mother repeated her possible ancestry with an "unknown tribe," but the maternal grandmother told the court that the maternal

great-grandmother was associated with the Alaskan "Blackfoot" tribe and that the maternal great-aunt had received a scholarship for being "one-eighth Indian." Neither the juvenile court nor the Department took any action in response to this additional, more specific information.

The Department filed an amended petition asserting additional grounds for dependency jurisdiction, including the parents' domestic violence, mother's substance abuse, and father's domestic violence with another woman. The juvenile court sustained the amended petition, and removed the children from both parents.

Father filed this timely appeal.

DISCUSSION

Father argues that the juvenile court violated ICWA when it did not give notice to the Alaskan Blackfoot tribe(s). Even though the Indian ancestry in this case derives, if at all, from mother, father is still entitled to demand compliance with ICWA. (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339.) Because the threshold for determining whether notice is required is a factual question, our review is for substantial evidence. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467 (*Hunter W.*).)

ICWA was enacted to curtail the "separation of large numbers of Indian children from their families and tribes through adoption or foster care placement." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.) To further this goal, ICWA—and the California statutes that implement it—impose several duties upon juvenile dependency courts. Among those duties is a juvenile court's duty, whenever it "knows or has reason to know that an Indian child is involved" in a proceeding before it, to "notify" (1) "the parent or Indian custodian," and (2) either (a) "the Indian child's tribe," if it is known, or (b) the Secretary of the Interior and the Bureau of Indian Affairs, if the

tribe is unknown. (25 U.S.C. § 1912(a); see also 25 U.S.C. § 1903(11); Welf. & Inst. Code, §§ 224.2, subd. (a)(4) & 224.3, subd. (d).) A child is an "Indian child" if he or she is either (1) "a member of an Indian tribe," or (2) "is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); Welf. & Inst. Code, § 224.1, subd. (a).) "[I]t is possible for a child to be an Indian child on the basis of a grandparent's membership in a tribe." (*In re B.H.* (2015) 241 Cal.App.4th 603, 607.) Notice to the tribe enables the tribe to decide whether the child is in fact an Indian child, and the tribe's determination is conclusive. (Welf. & Inst. Code, § 224.3, subd. (e)(1); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.)

The juvenile court violated this duty to notify. The threshold for giving notice—that is, when the court "'knows or has reason to know that an Indian child is involved'"—is a "'very low'" "'bar.'" (*In re D.C.* (2015) 243 Cal.App.4th 41, 60.) This bar is met if a parent identifies that he or she may be a member of a specific Indian tribe. (*Id.* at pp. 62-63; accord, *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 257-258.) Here, mother's mother indicated that the children's great-grandmother was associated with the Alaskan Blackfoot tribe(s). This was enough to require notice to that specific tribe or group of tribes. The notice previously given to the Bureau of Indian Affairs was insufficient, as it did not identify the specific tribe(s). (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1202 ["notice to the BIA is not an adequate substitute . . . for notice to all [named] tribes"].)

Because "[t]horough compliance with ICWA is required" (*In re J.M.* (2012) 206 Cal.App.4th 375, 381), the juvenile court's failure to give notice to the Alaskan Blackfoot tribe(s) compels a remand. However, the remand is conditional: The juvenile court is ordered to give notice to all pertinent Alaskan Blackfoot tribes

while leaving all remaining orders intact unless and until any notified tribes determine that the children are "Indian child[ren]" and are therefore invited to participate in the proceedings. (*Hunter W.*, *supra*, 200 Cal.App.4th at p. 1467.)

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are conditionally reversed. On remand, the juvenile court is directed to order the Department to properly comply with the inquiry and notice provisions of ICWA. If, after proper inquiry and notice, the court finds any of the children is an Indian child, the court shall proceed in conformity with ICWA. If the court finds the minors are not Indian children, the court's jurisdiction and dispositional orders are reinstated.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.