Filed 12/12/17 In re Michael S. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re MICHAEL S., Jr., et al., Persons Coming Under the Juvenile Court Law.	B280060 (Los Angeles County Super. Ct. Nos. DK17496 and DK17497
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MICHAEL S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Dismissed in part, conditionally affirmed in part, and remanded with directions.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Michael S. appeals from juvenile court orders declaring his children, Michael Jr., Michelle, and Mariah,[1] dependents of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b),[2] and placing them with their mothers or other family members. Michael contends the juvenile court and the Los Angeles County Department of Children and Family Services failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related state law. The Department contends Michael's appeals of the orders with regard to Michael Jr. and Mariah are moot because the juvenile court terminated jurisdiction over them after Michael filed these appeals. With regard to Michelle, the Department contends it and the court complied with ICWA and related state law requirements.

We conclude that Michael's appeals from the orders relating to Michael Jr. and Mariah are moot, but that the Department and the court failed to comply with the duty of further inquiry into Michelle's status as an Indian child.

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[1] California Rules of Court, rule 8.401(a) protects the personal privacy interests of juveniles in juvenile court proceedings by encouraging courts to use first names and last initials in opinions that are not certified for publication, or initials only if the first name is unusual. Both of Michael's daughters have unusual names beginning with the same two letters. We therefore refer to them by their middle names, Michelle and Mariah.

[2] Undesignated statutory references are to the Welfare and Institutions Code.

Therefore, we conditionally affirm the order as to Michelle and remand the matter to allow the juvenile court and the Department to remedy that violation of federal and state law.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Dependency Petitions and Hearings*

Michael has three children with two different mothers. Shelley G. is the mother of Michelle and Mariah, and Jaimee F. is the mother of Michael Jr. Michael had custody of and was living with all three children and Jaimee until his arrest in May 2016 for human trafficking.

Shortly after Michael's arrest, the Department detained the children, placed Michelle and Michael Jr. with their paternal grandmother, and placed Mariah, who has special medical needs, in a group home. On May 19, 2016 the Department filed dependency petitions on behalf of all three children. The petitions alleged Michael's involvement in human trafficking and his history of "assaultive behaviors" endangered the children's physical health and safety. The petitions also alleged the children's mothers failed to protect them or otherwise could not care for them.[3]

At the May 19, 2016 detention hearing for Michelle and Mariah, Michael and Shelley denied having Indian ancestry, but Michael's mother, who was present in court, said Michael had

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[3] Neither of the mothers is a party to this appeal.

Indian ancestry through her grandparents.[4] The court ordered the Department to investigate Michael's Indian ancestry and give notice to "any identified tribe and appropriate agencies." Over the Department's objections, the court released Michelle to her mother. Because Shelley was not yet able to care for Mariah's medical needs in her home, the court placed Mariah in the custody of the Department, and she remained in the group home.

At the detention hearing for Michael Jr. on the same day, Jaimee stated she may have Chickasaw and Choctaw ancestry, and the juvenile court again ordered the Department to investigate. The court detained Michael Jr. from his mother and placed him in the custody of the Department, which placed him with his paternal grandmother.

On May 24, 2016 Michael filed Form ICWA-020, Parental Notification of Indian Status, stating he may have Indian ancestry originating with an unknown tribe. At the conclusion of a hearing held that day, the court again ordered the Department to investigate Michael's Native American ancestry and to notify any identified tribe and appropriate agencies.

By the end of May 2016, the juvenile court had reunited Mariah with Michelle and released Mariah to her mother. On July 13, 2016, however, the court ordered Michelle detained from Shelley following an alleged incident of physical abuse. The Department concluded the allegations were unfounded, but Michelle said she did not want to live with Shelley, and Shelley did not object to Michelle's detention. The Department placed Michelle with her paternal aunt.

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[4] The court asked if Michael had "any Native American Indian ancestry," to which Michael's mother replied, "Yes. My grandparents."

The Department filed an amended petition concerning Michelle and Mariah on October 14, 2016. Like the original petition, the amended petition alleged Michael had a history of violent and assaultive behaviors and was involved in human trafficking. The amended petition, however, eliminated all allegations concerning Shelley's ability to care for Mariah and alleged only that she was unable to provide Michelle with "appropriate parental care and supervision due to ongoing parent-child conflict."

At the time of the jurisdiction and disposition hearing on December 13, 2016, Mariah remained at home with her mother, Michelle lived with her paternal aunt, and Michael Jr. lived with his maternal grandmother. The Department recommended the juvenile court grant the Department custody and control of all three children. The juvenile court sustained the amended petition concerning Michelle and Mariah, declared them dependents under section 300, subdivision (b), removed Michelle from the custody of her parents, and placed Michelle in the Department's care "for suitable placement." The court continued Mariah's placement with her mother and on December 16, 2016 terminated jurisdiction over her. The court declared Michael Jr. a dependent under section 300, subdivision (b), and, over the Department's objection, placed him with his mother. On June 27, 2017 the court terminated jurisdiction over Michael Jr.

Meanwhile, before the juvenile court terminated jurisdiction over Mariah and Michael Jr., Michael timely appealed from the jurisdiction and disposition orders concerning all three children. We consolidated Michael's appeal from the order concerning Michelle and Mariah with his appeal from the order concerning Michael.

B. *The Department's Efforts To Comply with ICWA*

After the juvenile court ordered the Department to "follow up" on the Indian ancestry of Michael and Jaimee, a Department investigator interviewed Michael and Jaimee's mother about their ancestry. Michael told the investigator he did not have any Indian ancestry, his mother's reference to Indian ancestry at the detention hearing concerned distant relatives, and he did not know the name of the tribe to which those relatives may have belonged. The Department apparently did not interview Michael's mother about her ancestry, even though her statement prompted the juvenile court to order the Department to "follow up" on Michael's Indian ancestry and the Department initially placed Michael Jr. with her.

Jaimee's mother told the Department investigator that Michael Jr.'s great-great-great-grandparents may have been members of the Chickasaw or Choctaw tribes. On behalf of Michael Jr., the Department sent Form ICWA-030, Notice of Child Custody Proceeding for Indian, notices to the Bureau of Indian Affairs (BIA), the Secretary of the Interior, the Chickasaw Nation, and several Choctaw tribes. The Department did not file any Form ICWA-030 notice on behalf of Michelle or Mariah.

The Department received responses from the Chickasaw Nation and the Mississippi Band of Choctaw Indians stating that, based on the information the Department provided, Michael Jr. is not an Indian child as defined by ICWA. No other band of the Choctaw Indians nor any federal agency responded to the Form ICWA-030 for Michael Jr. Based on the responses it received, the Department asked the juvenile court to "make an ICWA finding as to the child Michael [Jr.]."

At the combined jurisdiction and disposition hearing on December 13, 2016, the juvenile court did not address or make any findings concerning the children's status under ICWA. The court's minute orders following the hearing also failed to address ICWA.

DISCUSSION

Michael's appeals raise issues of compliance with the inquiry and notice requirements of ICWA and related state law. The Department argues Michael's appeals are moot with regard to Michael Jr. and Mariah because the juvenile court terminated jurisdiction over them. The Department also argues that, even if the appeals are not moot, the Department and the court satisfied ICWA's requirements with regard to Michael Jr., and there was no reason to know Michelle or Mariah were Indian children within the meaning of ICWA.

A. *ICWA and the Duty To Inquire*

"ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. [Citations.] For purposes of ICWA, an 'Indian child' is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (*In re Michael V.* (2016) 3 Cal.App.5th 225, 231-232; see 25 U.S.C. §§ 1902, 1903(4); § 224.1, subd. (a) [adopting federal definitions].)

"As the Supreme Court recently explained, notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. [Citation.] Notice to the parent or Indian custodian and the Indian child's tribe is required by ICWA in state court proceedings seeking foster care placement or termination of parental rights 'where the court knows or has reason to know that an Indian child is involved.' [Citation.] Similarly, California law requires notice to the parent, legal guardian or Indian custodian and the Indian child's tribe in accordance with section 224.2, subdivision (a)(5), if the Department or court 'knows or has reason to know that an Indian child is involved' in the proceedings." (*In re Michael V., supra*, 3 Cal.App.5th at p. 232; see § 224.3, subd. (d); *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649; see also Cal. Rules of Court, rule 5.481(b)(1) [notice is required "[i]f it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480," which includes all dependency cases filed under section 300].) "If the court has reason to know an Indian child may be involved in the pending dependency proceeding but the identity of the child's tribe cannot be determined, ICWA requires notice be given to the BIA." (*In re Breanna S.*, at p. 650, fn. 6; see *In re Isaiah W.*, at p. 8; 25 U.S.C. §§ 1903(11), 1912(a).) California law incorporates this requirement. (See § 224.2, subd. (a)(4).)

In cases where a dependent child's status as an Indian child is not conclusive, "[j]uvenile courts and child protective agencies have 'an affirmative and continuing duty to inquire' whether [the] child is or may be an Indian child." (*In re*

Michael V., supra, 3 Cal.App.5th at p. 233, quoting § 224.3, subd. (a); accord, *In re Isaiah W., supra*, 1 Cal.5th at pp. 9, 10-11.) "This affirmative duty to inquire is triggered whenever the child protective agency or its social worker 'knows or has reason to know that an Indian child is *or may be* involved . . . . ' [Citation.] At that point, the social worker is required, as soon as practicable, to interview the child's parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility." (*In re Michael V.*, at p. 233, italics added, quoting Cal. Rules of Court, rule 5.481(a)(4); see § 224.3, subd. (c).) "[T]he duty to inquire is triggered by a lesser standard of certainty regarding the minor's Indian child status . . . than is the duty to send formal notice to the Indian tribes." (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1200; see *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 652.)

ICWA does not define "reason to know," nor did the implementing federal regulations in effect when the Department filed the petitions in this case. (See former 25 C.F.R. § 23.11; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 650 & fn. 7; *In re H.B.* (2008) 161 Cal.App.4th 115, 121, fn. 3.)[5] California

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[5] New regulations implementing ICWA, adopted as of December 12, 2016, identify circumstances in which a court has "reason to know" the child is an Indian child, including if "[a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child." (25 C.F.R. § 23.107(c)(2); see *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 650, fn. 7.) These regulations apply to any child custody proceeding initiated on or after December 12, 2016. A "child-custody proceeding" includes,

statutory law, however, incorporates and enhances ICWA's requirements. (*In re Breanna S.*, at p. 650.) In particular, section 224.3, subdivision (b)(1), describes the circumstances that may provide reason to know a child is an Indian child, including, without limitation, when a member of the child's extended family provides 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 parents, grandparents, or great-grandparents are or were a member of a tribe. (See *In re Isaiah W.*, *supra*, 1 Cal.5th at p. 15 ["section 224.3, subdivision (b) sets forth a nonexhaustive list of 'circumstances that may provide reason to know the child is an Indian child'"]; *In re Breanna S.*, at p. 650 [same].)

B. *Michael's Appeals from the Orders Concerning Michael Jr. and Mariah Are Moot*

The Department contends Michael's appeals with regard to Michael Jr. and Mariah are moot because the juvenile court has placed or returned them to their respective mothers and has terminated jurisdiction over them. The Department argues that, because Michael does not contest his children's placements, we cannot provide him any effective relief. The Department also argues that, because the juvenile court terminated jurisdiction over Michael Jr. and Mariah, there is no longer any pending state

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as a separate proceeding, a foster care placement, a termination of parental rights, a preadoptive placement, or an adoptive placement. (25 U.S.C. § 1903(1); 25 C.F.R. § 23.2.) If any one of these types of proceedings is initiated on or after December 12, 2016, the new regulations apply to that proceeding. The proceedings in this case were initiated on May 19, 2016.

court proceeding seeking foster care placement and, therefore, ICWA does not apply. The Department is correct.

"As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.'" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488; *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) "'An issue is not moot if the purported error infects the outcome of subsequent proceedings.'" (*In re C.C.*, at p. 1488.)

ICWA applied to the dependency proceedings involving Michael Jr. and Mariah because those proceedings could have resulted in foster care placement. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1388 [ICWA applied "even though [the dependent child] was ultimately placed with a relative and not in foster care"]; *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 700 [ICWA applies where the "issue of possible foster care placement was squarely before the juvenile court"]; see also 25 U.S.C. § 1903(1)(i) [ICWA applies to a "child custody proceeding" in which an Indian child may be removed from its parent for temporary placement in a foster home or institution and where the parent cannot have the child returned upon demand]; U.S. Dept. of the Interior, Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act, 81 Fed.Reg. 96476, https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf (BIA Guidelines) at p. 79 ["ICWA [applies] to an

action where a court was considering a foster-care placement of a child, but ultimately decided to return the child to his parents"].)[6]

Once the juvenile court placed Michael Jr. and Mariah with their respective mothers and terminated jurisdiction over them, however, the prospect of out-of-home placement and ICWA's relevance ended. Native American tribes have no interest in intervening in a case where a juvenile court's final judgment places an Indian child with a parent. (See *In re J.B.* (2009) 178 Cal.App.4th 751, 760 ["the legislative intent behind ICWA expressly focuses on the removal of Indian children from their homes and parents, and placement in foster or adoptive homes," italics omitted]; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 15

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[6] On December 12, 2016 the BIA issued new guidelines on ICWA's implementation to accompany the new regulations that became effective on that date. The new BIA Guidelines apply to proceedings subject to the new regulations. (BIA Guidelines, *supra*, at p. 4.) Although the 2016 regulations do not apply to these appeals, we refer to the 2016 BIA Guidelines for guidance in interpreting and applying ICWA. (See *In re W.B.* (2012) 55 Cal.4th 30, 50, fn. 9 [applying the 1979 guidelines and stating that the BIA Guidelines "are instructive but not determinative of state court decisions"]; *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1387, fn. 10 [applying the 2015 guidelines and stating that, "[a]lthough not binding on state courts, the BIA Guidelines are 'instructive'"]; see also *Matter of Adoption of T.A.W.* (2016) 186 Wash.2d 828, 846-847 [calling the BIA's June 2016 commentary on the new regulations "informative" and applying it to a proceeding initiated before December 12, 2016].)

[ICWA's purpose does not come into play if an Indian child is not placed with another family].)[7]

Michael argues we should nevertheless consider his appeals because we "review[ ] the correctness of a judgment as of the time of its rendition." While that is true as a general proposition (see *In re Zeth S.* (2003) 31 Cal.4th 396, 405), it does not change the fact that the errors Michael alleges cannot "infect the outcome" of any subsequent proceeding involving Michael Jr. and Mariah. (See *In re C.C.*, *supra*, 172 Cal.App.4th at p. 1488; cf. *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432 [jurisdiction challenge was not moot where the findings "could affect Father in the future" and the outcome of subsequent proceedings].) To the extent Michael Jr. or Mariah is the subject of a future "child custody proceeding" under ICWA, the duties of inquiry and notice will arise again. (See § 224.3, subd. (a) [courts and child welfare agencies have an affirmative and continuing duty of inquiry and notice]; *In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 10-11 [juvenile court has a continuing duty to inquire into a child's Indian status at "'all dependency proceedings'" involving that child]; BIA Guidelines, *supra*, at p. 11 ["[i]n situations in which [a] child [is] not identified as an Indian child in [a] prior proceeding, the court has a continuing duty to inquire whether the child is an Indian child"].)

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[7] *In re Jennifer A.*, *supra*, 103 Cal.App.4th 692, cited by Michael, is distinguishable. Although the court in that case reversed orders declaring a possible Indian child a dependent and placing her with her noncustodial father because of violations of ICWA's notice requirements, the juvenile court had not terminated jurisdiction over the child at the time the Court of Appeal filed its decision. (See *id.* at pp. 700, 709-710.)

Thus, even if the court and the Department failed to fulfill their duties under ICWA or state law with regard to Michael Jr. and Mariah, Michael has not shown how we can grant him effective relief. Therefore, we dismiss as moot Michael's appeals from the juvenile court orders as they relate to Michael Jr. and Mariah.

C. *The Court and the Department Failed To Fulfill Their Duty To Inquire Whether Michelle Is an Indian Child*

Michael contends the court and the Department failed to comply with ICWA's duties of inquiry and notice with regard to Michelle despite having "reason to know" she may be an Indian child. The Department argues the court had no reason to know Michelle may be an Indian child based on her father's ancestry. Our review is de novo. (See *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 235, fn. 5 ["[w]hen the facts are undisputed, we review independently whether ICWA requirements have been satisfied"].)

1. *The Court and the Department Had Reason To Know Michelle May Be an Indian Child*

Section 224.3, subdivision (a), imposes "an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . has been[ ] filed is or may be an Indian child in all dependency proceedings . . . if the child is at risk of entering foster care or is in foster care." (See *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168.) California Rules of Court, rule 5.481(a)(4)(A) requires the Department to "make further inquiry as soon as practicable" if the Department "knows or has

reason to know that an Indian child is or may be involved" in a proceeding covered by ICWA.

As noted, less certainty is required about an Indian child's status to activate the duty to inquire than is required for the duty to send notice to the Indian tribes. (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 652; *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 235; *In re Alice M.*, *supra*, 161 Cal.App.4th at p. 1200.) For example, "there are many instances in which vague or ambiguous information is provided regarding Indian heritage or association (e.g., 'I think my grandfather has some Indian blood'; 'My great-grandmother was born on an Indian reservation in New Mexico'). In these types of cases . . . inquiry is necessary before any attempt at notice to a specific tribe even can be made." (*In re Alice M.*, at p. 1200.)

This is one of those cases. At the detention hearing, Michael's mother informed the court that Michael had Indian ancestry through her grandparents, Michelle's great-great-grandparents. This information gave the court and the Department reason to know Michelle may be an Indian child, thus triggering the duty of further inquiry. Indeed, courts have held similar information triggered ICWA's duty of notice, which requires a higher standard of certainty about a child's Indian ancestry. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1386-1387 [information from dependent child's grandmother suggesting the child's great-great-great-grandparents were members of the Blackfeet tribe triggered the duty to give notice under ICWA and state law]; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 [father's suggestion that his child "might" be an Indian child because the paternal great-grandparents had unspecified Native American ancestry triggered the duty of

notice]; see also *In re D.C.* (2015) 243 Cal.App.4th 41, 63 ["[a] hint may suffice for . . . the minimal showing required to trigger" the duty of notice].)

The Department contends Michael's mother's "[v]ague reference[] to Indian ancestry" did not trigger the duty of notice, but the Department does not argue the statement did not trigger the duty to inquire. Instead, the Department appears to concede the point and argues only that any "deficient" inquiry into Michelle's Indian ancestry should warrant a conditional affirmance, not reversal, of the juvenile court's orders.

2. *The Court and the Department Failed To Satisfy the Duty To Inquire*

Once the Department had reason to know Michelle may be an Indian child, the Department had the duty to "make further inquiry as soon as practicable by [i]nterviewing the parents, Indian custodian, and 'extended family members' as defined in 25 United States Code sections 1901 and 1903(2), to gather the information listed in [section] 224.2(a)(5)." (Cal. Rules of Court, rule 5.481(a)(4)(A); see § 224.3, subd. (c) [requiring social workers "to make further inquiry regarding the possible Indian status of [a] child" once the court or social worker knows or has reason to know an Indian child is involved in a child custody proceeding]; *In re Robert A.* (2007) 147 Cal.App.4th 982, 989 [a "'social worker has "a duty to inquire about and obtain, if possible, all of the information about a child's family history"'" required under regulations promulgated to enforce ICWA].) "Extended family members" includes grandparents. (25 U.S.C. § 1903(2).) The information listed in section 224.2, subdivision (a)(5), includes, among other things, the name of the Indian tribe in which the

child is a member or may be eligible for membership, names of the child's grandparents and great-grandparents, and those relatives' identifying information, including addresses and birth and death dates and places.

After the juvenile court ordered the Department to "investigate ICWA issues as to [Michael]," a Department investigator interviewed Michael, who said he did not have Native American ancestry. The investigator asked Michael why his mother said she had Native American ancestry, and Michael said "she was referring to some distant relative," he did not believe he had any Native American ancestry, and he had no knowledge of the name of any tribe to which his relatives may have belonged. There is no evidence, however, the Department ever interviewed Michael's mother to ask her to elaborate on the statement she made during the detention hearing and to obtain the information listed in section 224.2, subdivision (a)(5). Because the Department failed to interview her and seek out any other source of the information listed in section 224.2, subdivision (a)(5), the Department failed to fulfill its duty of further inquiry. (See *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 235 [child welfare agency failed to satisfy its duty to make further inquiry where it "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"]; *In re Andrew S.* (2016) 2 Cal.App.5th 536, 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].) The Department cannot rest on the information Michael gave the investigator, which conflicted with his mother's statement in court. (See *In re*

Gabriel G., *supra*, 206 Cal.App.4th at pp. 1167-1168 [where there is conflicting evidence regarding a child's Indian status, the child welfare agency must make a further inquiry].)

Moreover, the juvenile court failed to ensure the Department had conducted an adequate investigation into Michelle's status as an Indian child. (See *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 235 [juvenile court failed to ensure the child welfare agency conducted an adequate investigation after ordering the agency to investigate the children's possible Indian ancestry]; *In re Gabriel G.*, *supra*, 206 Cal.App.4th at p. 1168 [juvenile court "had the same 'affirmative and continuing duty' [as the child welfare agency] to inquire regarding the possible Indian status of the child"].) The court, having ordered the Department to investigate, also failed to make any findings concerning Michelle's status under ICWA. Indeed, without having the results of an adequate investigation, the juvenile court could not determine whether ICWA applied. (See *In re Jennifer A.*, *supra*, 103 Cal.App.4th at p. 703 ["[w]ithout knowing whether proper notice was given, and whether any response was received from the tribes, the juvenile court could not knowingly determine whether [ICWA] applied"].)

Because we conclude the juvenile court and the Department failed to adequately inquire about Michelle's status as an Indian child, we do not consider whether her grandmother's statement that she had Indian ancestry through her grandparents, without more, triggered the duty of formal notice.[8]

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[8] Although Michelle's grandmother's statement did not include the name of the tribe with which her grandparents were affiliated, ICWA and California law nevertheless require notice to the BIA if the court has reason to know an Indian child is

Instead, we conditionally affirm the court's jurisdiction findings and disposition orders concerning Michelle and remand for the juvenile court to direct the Department to make further inquiries regarding Michelle's possible Indian status and, if appropriate, to send ICWA notices to the relevant tribe(s) and the BIA in accordance with ICWA and California law. (See § 224.2, subd. (a); *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 236; *In re Andrew S.*, *supra*, 2 Cal.App.5th at p. 548; *In re Gabriel G.*, *supra*, 206 Cal.App.4th at p. 1169.) The Department is to notify the juvenile court of its actions and file certified-mail, return receipts for any ICWA notices that it sends, together with any responses it receives. The juvenile court is then to determine whether the ICWA inquiry and notice requirements have been satisfied and whether Michelle is an Indian child. If the juvenile court finds she is an Indian child, the court is to conduct a new disposition hearing, as well as all further proceedings, in compliance with ICWA and related California law. If not, the court's original orders remain in effect. (See *In re Michael V.*, at p. 236.)

DISPOSITION

The appeals from the jurisdiction and disposition orders concerning Mariah and Michael Jr. are dismissed as moot. The jurisdiction findings and disposition order concerning Michelle are conditionally affirmed. The matter is remanded to the

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involved in the pending dependency proceeding but the identity of the child's tribe cannot be determined. (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 650, fn. 6; see 25 U.S.C. §§ 1903(11), 1912(a); § 224.2, subd. (a)(4).)

juvenile court with directions to comply with the inquiry and notice provisions of ICWA and related California law.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.