Filed 8/16/18 In re C.S. CA2/3

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

In re C.S., a Person Coming Under the Juvenile Court Law.	B287609
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. LISA S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK46877D)

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Draper, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Sally Son, Deputy County Counsel for Plaintiff and Respondent.

Lisa S. (mother) appeals a juvenile court order terminating parental rights to her daughter, C.S. Mother contends the termination order should be conditionally reversed because the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with the inquiry and notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901 et seq.; Welf. & Inst. Code, §§ 224–224.3).[1] We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Dependency History

C.S., born in January 2013, is the child of mother and an unknown father.[2] In June 2014, while mother was serving a jail term for drug use, mother placed C.S. with Ana Z., a family friend. In November 2015, Ana notified DCFS that mother sought to regain custody of C.S.; Ana was concerned that mother could not safely care for C.S. because she continued to use drugs. Mother subsequently tested positive for methamphetamine use.

DCFS filed a juvenile dependency petition in December 2015, alleging jurisdiction over C.S. due to mother's drug use and history of depression and anxiety. (§ 300, subd. (b).) The court sustained the petition on February 23, 2016, and subsequently ordered DCFS to provide mother with reunification services.

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[1] All subsequent undesignated statutory references are to the Welfare and Institutions Code.

[2] Mother has five older children, four of whom were subject to juvenile court jurisdiction and have been adopted. Mother's older children are not subjects of this appeal.

B. Facts Relevant to Mother's ICWA Claims

Mother submitted an ICWA-020 form on December 16, 2015, stating that she might be eligible for membership in the "Iroquois-Mohawk Nation, West Virginia area." The juvenile court ordered DCFS to investigate mother's possible Indian ancestry.

On December 29, 2015, DCFS served ICWA notices on seven Iroquois tribes (Cayuga Nation of New York, Oneida Indian Nation, Onondaga Nation of New York, Saint Regis Mohawk Tribe, Seneca Nation of Indians, Tonawanda Band of Seneca, and Tuscarora Nation of New York), the Director of the Bureau of Indian Affairs (BIA), and the Secretary of the Interior. The notices provided the names of mother and the maternal grandmother; as to other maternal relatives, the notice stated "unknown."

In May 2016, DCFS served new ICWA notices on the same tribes and government agencies. The new notices provided some additional information about C.S.'s possible Indian relatives—namely, additional names by which mother had been known in the past, mother's past addresses, the maternal grandmother's birth date and place of birth, the maternal grandfather's name, the names of the maternal great-grandmother and great-grandfather, and the birth date and address of the maternal great-grandmother. In August 2016, DCFS provided the court with return receipts as to all nine addressees (the seven Iroquois tribes and two government agencies), plus responses from two tribes indicating that C.S. was not eligible for tribal membership.

On August 4, 2016, the juvenile court found C.S. was not an Indian child within the meaning of ICWA.

C. Termination of Parental Rights

In April 2017, the juvenile court terminated mother's reunification services and set a hearing pursuant to section 366.26. On January 11, 2018, the court terminated parental rights to C.S., and designated Ana the prospective adoptive parent. Mother timely appealed from the termination order.

DISCUSSION

Mother contends that the ICWA notices issued in this case were defective because DCFS (1) did not provide notice to two of nine federally recognized Iroquois tribes, and (2) did not include in the ICWA notices information about C.S.'s Indian ancestors that could have been obtained by interviewing mother's relatives. As we now discuss, neither claim has merit.[3]

A. Governing Law and Standard of Review

ICWA was enacted "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." (25 U.S.C. § 1902.)

To that end, specific notice requirements are triggered when the juvenile court "knows or has reason to know that an Indian child is involved" in a dependency proceeding. (§§ 224.2–

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[3] In connection with the issues raised on appeal, on May 24, 2018, DCFS filed a request for judicial notice and motion to strike. We previously deferred ruling on both motions. We now grant the request for judicial notice and deny the motion to strike.

224.3; 25 U.S.C. § 1912(a).) " 'Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under the Act irrespective of the position of the parents, Indian custodian or state agencies. Specifically, the tribe has the right to obtain jurisdiction over the proceedings by transfer to the tribal court or may intervene in the state court proceedings. Without notice, these important rights granted by the Act would become meaningless.' (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) Among other things, notice to potentially affected tribes must include '[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.' (Welf. & Inst. Code, § 224.2, subd. (a)(5)(C); 25 C.F.R. § 23.11(d)(3) (2012); see 25 U.S.C. § 1912(a).) Notice requirements are strictly construed and must contain enough information to allow a meaningful review of the tribal records. (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.)" (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 56–57 (*Charlotte V.*).)

The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. We review the trial court's findings for substantial evidence, and deficiencies or errors in an ICWA notice are subject to harmless error review. (*Charlotte V.*, *supra*, 6 Cal.App.5th at p. 57.)

B. Mother Has Not Demonstrated That DCFS Failed to Provide Adequate ICWA Notice to All Federally Recognized Iroquois Tribes

Mother acknowledges that DCFS provided ICWA notice to seven federally recognized Iroquois tribes. She contends, however, that DCFS also was required to provide notice to two additional tribes and that DCFS's failure to provide such notice is reversible error.

Mother's contention is without merit. Pursuant to federal ICWA regulations, the Bureau of Indian Affairs has issued "a table that lists designated Tribal agents alphabetically *by the Tribal affiliation*." (81 Fed. Reg. 10887-10888, 10909 (Mar. 2, 2016), italics added (<https://www.gpo.gov/fdsys/pkg/FR-2016-03-02/pdf/2016-04619.pdf> [as of Aug. 16, 2018]).) As relevant here, that table lists seven (not nine) federally-recognized Iroquois tribes, all of which received notice in this case. (See *ICWA; Designated Tribal Agents for Service of Notice—Listing of Tribes by Historical Affiliation* (updated 11/28/15), available at https://www.bia.gov/bia/ois/dhs/icwa> [as of Aug. 16, 2018].) Notice, therefore, was sufficient.

For the proposition that there are nine (not seven) federally-recognized Iroquois tribes, mother cites two web sites, USHistory.org and Native-American-Indian-Facts.com. These sites allegedly state that the Iroquois Indians consist of six nations (Cayuga, Mohawk, Oneida, Onondaga, Seneca, and Tuscarora), which are associated with nine federally recognized tribes. Whatever the merits of mother's claim as a historical matter—an issue we do not reach—mother provides no authority for the proposition that these sources are relevant to federal or state ICWA notice requirements. Her claim therefore fails.

C. Mother Has Not Demonstrated That the ICWA Notices Omitted Any Reasonably Available Information About C.S.'s Indian Ancestors

Mother also contends the ICWA notices were defective because they included only limited information about C.S.'s maternal ancestors. Mother does not suggest that the ICWA notices omitted any information DCFS possessed, but she urges that DCFS "did not make a meaningful effort to contact mother's family members who *might* have information about C.S.'s Indian ancestry." (Italics added.)

The record indicates that in response to DCFS's inquiry, mother disclosed that she had Iroquois ancestry but was not registered with any tribe. Through her attorney, she further indicated that her Indian ancestry was through her maternal grandfather (the maternal great-grandfather), but that she did not have a telephone number for her mother (the maternal grandmother). Mother did not provide contact information for any maternal relative. DCFS included the limited information available to it in its first set of ICWA notices; it then sent a second set of ICWA notices after discovering additional information about the family's ancestry from reviewing the ICWA notices sent in C.S.'s siblings' cases.

Mother asserts that in addition to the inquiry it conducted, DCFS also should have contacted C.S.'s maternal great-grandmother, for whom DCFS had a mailing address, as well as other unidentified "relatives, ancestors or lateral kin, such as uncles and aunts." Mother's claim fails. A violation of ICWA's inquiry requirement is harmless " 'unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error.' " (*In re*

H.B. (2008) 161 Cal.App.4th 115, 122.) In this case, notwithstanding her assertion that DCFS should have contacted other "relatives, ancestors or lateral kin," mother has not identified on appeal any such living relatives, much less represented that they could have supplied any of the information she contends should have been included in the ICWA notices. Similarly, although mother claims DCFS should have contacted the maternal great-grandmother, mother has not made an affirmative representation that C.S.'s maternal great-grandmother has any meaningful information about C.S.'s alleged Indian ancestry—nor, indeed, that she is still living.

Because mother has not made an affirmative representation that any of her relatives could have supplied any information relevant to C.S.'s alleged Indian ancestry, she has not demonstrated prejudicial error. (See *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431 ["Father is here, now, before this court. There is nothing whatever which prevented him, in his briefing or otherwise, from removing any doubt or speculation. He should have made an offer of proof or other affirmative representation that, had he been asked, he would have been able to proffer some Indian connection sufficient to invoke the ICWA. He did not"].) In the absence of such a representation, "the matter amounts to nothing more than trifling with the courts. [Citation.] . . . . The ICWA is not a 'get out of jail free' card dealt to parents of non-Indian children, allowing them to avoid a termination order by withholding secret knowledge, keeping an extra ace up their sleeves. Parents cannot spring the matter for the first time on appeal without at least showing their hands. Parents unable to reunify with their children have already caused the children serious harm; the rules do not permit them to

cause additional unwarranted delay and hardship, without any showing whatsoever that the interests protected by the ICWA are implicated in any way." (*In re Rebecca R.*, *supra*, at p. 1431.)

DISPOSITION

The order terminating parental rights is affirmed. DCFS's request for judicial notice, filed May 24, 2018, is granted; its motion to strike, also filed May 24, 2018, is denied.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.