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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re E.C., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B286860
(Super. Ct. No. 16JD-00442)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

T.C. (Mother) appeals an order of the juvenile court
declaring that her minor child E.C. is adoptable and terminating

her parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)¹
We affirm.

FACTUAL AND PROCEDURAL HISTORY

In the early morning of December 16, 2016, Atascadero police officers arrested Mother after she broke into her neighbor's home following an argument with the neighbor less than an hour before. Earlier that week, police officers responded to a complaint by neighbors that Mother had knocked on their doors and threatened them. A responding social worker found Mother's apartment in disarray with decaying food on the kitchen counters and stove. The apartment had an odor of marijuana, and marijuana paraphernalia and an empty liquor bottle were in plain view. Mother suffers from significant mental illness and held delusional thoughts regarding neighbors posting nude photographs of her. During Mother's confrontation with the neighbors, she left two-year-old E.C. unattended inside the apartment.

On December 20, 2016, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition regarding E.C. DSS alleged that Mother left E.C. alone when she confronted and harassed neighbors in her apartment complex. DSS noted that Mother has refused to participate in mental health counseling. E.C.'s father (Father) had been imprisoned for a violent gang-related crime and was later deported; he is not an active parent to E.C. (§ 300, subds. (b) [failure to protect], (g) [failure to support].)

The juvenile court detained E.C. and placed her custody and care with DSS. The court later sustained the allegations of

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

the dependency petition pursuant to section 300, subdivisions (b) and (g), and ordered family reunification services to the parents. DSS initially placed E.C. in a foster home, and later with her paternal grandmother.

During the dependency proceedings, Father informed the juvenile court and DSS that he had no Indian heritage. Mother informed the court and DSS that she may have Indian heritage with the Klamath Indian Tribe through her maternal grandfather. Mother's sister attended the detention proceeding and informed the court that she was an enrolled member of the Klamath Tribe. Mother's sister offered to share the family ancestry information with DSS.

Subsequently, DSS prepared a notice on Judicial Council Form ICWA-030 ("Notice of Child Custody Proceedings for Indian Child"). The notice contained information regarding Mother, E.C.'s maternal grandmother, and E.C.'s maternal great-grandparents, and was mailed to the Klamath Tribe, the Sacramento Bureau of Indian Affairs, and the Secretary of the Interior. DSS also mailed a copy of the completed Form ICWA-030 to Mother and Father. DSS subsequently received return receipts for the mailings and filed the receipts with the court.

On April 17, 2017, Mother applied for membership in the Klamath Tribe by completing an application with the assistance of the DSS social worker. DSS inquired of the tribe on May 12 and 30, 2017, regarding Mother's application. On June 14, 2017, the DSS social worker spoke with the Klamath Tribe eligibility coordinator and learned that Mother has a one-eighth blood quantum membership in the tribe, but that E.C. is not eligible for membership. Counsel for DSS later so informed the juvenile court at the permanent plan hearing. Mother did not challenge

counsel's oral statement regarding E.C.'s non-eligibility for Klamath Tribe enrollment or membership.

Mother's family reunification services plan required her to obtain mental health treatment, participate in parent education classes, obtain substance abuse treatment, and randomly drug test, among other things. Despite reminder letters from DSS, Mother did not comply with her services plan. When interviewed by the DSS social worker on March 14, 2017, Mother appeared "distracted" and "belligerent." She engaged in sporadic visitation with E.C. and went "missing" from March 17 through April 10, 2017.

On August 7, 2017, DSS filed an interim report recommending that the juvenile court order the termination of reunification services and set the matter for a permanent plan hearing. DSS reported that Mother had not complied with her services plan and had refused to meet or participate with the DSS referrals. The report of the court-appointed special advocate agreed that reunification services should be terminated in view of Mother's untreated mental illness.

Following a contested hearing, the juvenile court terminated family reunification services to Mother and Father and set the matter for a permanent plan hearing.

On December 6, 2017, the juvenile court held a permanent plan hearing and also considered Mother's motion pursuant to section 388 to reinstate reunification services. The court received evidence of DSS reports and took judicial notice of the dependency file. It then found by clear and convincing evidence that E.C. was adoptable, and ICWA does not apply. It then terminated parental rights. The court also denied Mother's request pursuant to section 388 because it was not in E.C.'s best

interest to reinstate reunification services and Mother had not established changed circumstances.

Mother appeals and contends that the juvenile court erred by determining that ICWA does not apply to E.C. Father is not a party to this appeal.

DSS has requested that we take judicial notice of the earlier court record in this proceeding, the Klamath Tribe's published membership requirements, including the blood quantum requirements, and a letter dated April 4, 2018, from the Klamath Tribe stating that E.C. is neither an enrolled member nor eligible for enrollment. We grant the request. (Evid. Code, §§ 452, 459; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 654, fn. 11 [judicial notice taken of minimum blood quantum requirements of Indian tribe].)

DISCUSSION

Mother argues that the juvenile court's ICWA determination is not supported by sufficient evidence because DSS failed to adequately investigate her Indian ancestry and provide all available information to the court and the Klamath Tribe. She contends that the ICWA notices contain insufficient and incomplete information regarding her relatives with Klamath Indian ancestry, i.e., her sister who is an enrolled Klamath Tribe member, or her father. Mother asserts that the parental rights termination order should be reversed and the matter remanded to ensure compliance with ICWA.

ICWA notice requirements are strictly construed and must provide sufficient information to allow sufficient review of tribal records. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 56.) The notices must include, among other things, the maiden and married names of the child's biological parents, grandparents,

and great-grandparents, as well as their current and former addresses, birthdates, place of birth and death, tribal enrollment numbers, and any other identifying information. (25 U.S.C. § 1912(a); § 224.2, subd. (a)(5)(C).)

The juvenile court determines whether proper notice was given under ICWA and whether ICWA applies to the proceedings. (*In re Charlotte V.*, *supra*, 6 Cal.App.5th 51, 57.) We review the court's findings for substantial evidence. (*Ibid.*) Deficiencies or errors in an ICWA notice, however, may be subject to review for harmless error. (*Ibid.*)

According to the Klamath Tribe constitution, tribal enrollment is open to persons with one-eighth degree Klamath blood. Application for enrollment requires a family tree with documents authenticating the ancestry. Here Mother's application and the ICWA-030 form for E.C. provided sufficient information to determine Mother's and E.C.'s eligibility.

An Indian tribe's determination of a child's membership or eligibility for membership in the tribe "shall be conclusive." (§ 224.3, subd. (e)(1); *In re Isaiah W.* (2016) 1 Cal.5th 1, 9.) "A state court may not substitute its own determination for that of the tribe regarding a child's membership or eligibility for membership in a tribe." (*In re K.P.* (2015) 242 Cal.App.4th 1063, 1074.) Here the Klamath Tribe has enrolled Mother as a member based upon the one-eighth minimum blood quantum requirement. The tribe has also determined that based upon E.C.'s blood quantum, she is ineligible for enrollment. This determination is conclusive in state court custody proceedings. (§ 224.3, subd. (e)(1); *In re Breanna S.*, *supra*, 8 Cal.App.5th 636, 654-655.)

The asserted failure of DSS to elicit information regarding Mother's father is harmless because Mother claimed Klamath Indian heritage through her mother's father. (*In re Charlotte V.*, *supra*, 6 Cal.App.5th 51, 58 [lack of notice concerning maternal grandfather was "irrelevant" because there was no indication the maternal grandfather had any Indian ancestry].)

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Jacques Alexander Love, under appointment by the Court
of Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy, for
Plaintiff and Respondent.