Filed 12/11/17 In re P.Z. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re P.Z. et al., Persons Coming Under the Juvenile Court Law.	B280221 (Los Angeles County Super. Ct. No. DK01461)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. GIOVANNA P., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

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Giovanna P. (mother) appeals from the juvenile court's order terminating her parental rights as to her children P.Z. and G.Z. Mother claims the court did not comply with the requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA) and its corresponding provisions under California law (see Welf. & Inst. Code, § 224 et seq.).[1] We affirm.

BACKGROUND[2]

At the time the proceedings underlying this appeal began, mother was living with Jonathan Z. (father). They lived with their daughter P.Z., born in August 2012, as well as mother's daughter from a previous relationship, M.D., born in August 2007. M.D.'s father is Adam D.

In September 2013, respondent Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition under section 300 seeking to detain M.D. and P.Z. from mother and father. The petition alleged that father had physically abused M.D. and that mother and father had engaged in domestic disputes in the children's presence.

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1 Further undesignated statutory references are to the Welfare and Institutions Code.

2 We limit the facts to those relevant to the narrow issue on appeal, and do not provide a comprehensive summary of the proceedings below.

Son G.Z. was born to mother and father that same day. On September 30, 2013, DCFS filed a petition to detain him as well.

On September 24, 2013, in advance of the detention hearing for M.D. and P.Z., father filed an ICWA-020 form, "Parental Notification of Indian Status," on which he indicated that he "may have Indian ancestry." Mother and Adam D. filed ICWA-020 forms stating that neither had Indian ancestry as far as they knew.

At the hearing that same day, the juvenile court, the Honorable Annabelle G. Cortez, found that mother and Adam D. "d[id] not claim American Indian heritage." The court inquired further as to father. Father stated, ". . . I have not found out the family history. I know that it was back in Florida and it goes back four generations. I can ask my grandmother." The court asked who would have the information. Father said, "I can look it up. That's the only thing." Father said his grandmother's last name was Ojinaga, and he provided her telephone number. Father said, "I am going off based upon what my family has told me in the past." The court ordered DCFS "to follow up on the father's Indian heritage." The court also ordered that M.D. and P.Z. be detained.

The minute order following the September 24 hearing did not accurately reflect the proceedings. It stated that the court found that ICWA did not apply to either mother or father and directed DCFS "to investigate possible American Indian heritage claimed by [Adam D.]." This directive was immediately followed in parentheses by "(Ojinaga(?))."

On September 26, 2013, a DCFS social worker signed an "Indian Child Inquiry Attachment" for G.Z. stating that "[t]he

child has no known Indian ancestry." G.Z.'s detention report, filed September 30, stated that ICWA did not apply.

Also on September 30, in advance of G.Z.'s detention hearing, father filed another ICWA-020 in which he indicated he had no Indian ancestry as far as he knew. At the hearing that same day, now with the Honorable Tim R. Saito presiding, the court stated to father that "I do have your 505 form[3] and it is indicating that you have no Indian ancestry as far as you know?" Father replied, "Yes." The court asked father if the signature on the form was his, and father again said yes. The court then found that ICWA did not apply as to father. The court ordered G.Z. detained.

DCFS's subsequent reports stated that ICWA did not apply as to mother and father, with some citing the erroneous September 24 minute order. Two of the reports referenced the September 24 order's directive to further investigate Adam D.'s Indian heritage, and stated that per the Bureau of Indian Affairs "the Ojinaga Tribe is not amongst the Federally recognized Native American Indian Tribes of the United States." On March 12, 2014, the court found that ICWA did not apply to Adam D.

After further proceedings taking place over several years,[4] the court terminated mother's and father's parental rights as to

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[3] In addition to the ICWA-020 form, father submitted a JV-505 form, "Statement Regarding Parentage." The JV-505 says nothing about father's Indian heritage, so presumably the court meant to refer to the ICWA-020.

[4] Son D.Z. was born to mother and father in November 2015. DCFS filed a section 300 petition seeking to detain him on

P.Z. and G.Z. on January 4, 2017, and ordered a permanent plan of adoption.[5]

Mother timely appealed.[6]

DISCUSSION

Mother claims that the juvenile court failed to "discharge the continuing duty of inquiry" as to father's Indian heritage. We disagree.[7]

ICWA requires that notice be provided "to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.' " (*Isaiah W., supra*, 1 Cal.5th 1, 8, quoting 25 U.S.C. § 1912(a).) California Rules of Court, rule 5.481(a)(5) contains a nonexclusive list of "circumstances that may provide reason to know" that a child is Indian, including: "The child or a person having an interest in the

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November 24, 2015. Per mother's appellate counsel, mother claimed Indian heritage during D.Z.'s proceedings, but was found not to have such heritage following an investigation. We have not independently verified this given that mother's ICWA proceedings are not at issue in this appeal.

[5] M.D.'s and D.Z.'s cases are not part of this appeal.

[6] Mother requests that this court take judicial notice of the notices of appeal filed earlier in this case and the corresponding appellate dockets. The request is granted pursuant to Evidence Code section 452, subdivision (d).

[7] Although mother did not appeal the September 2013 finding that P.Z. and G.Z. did not have Indian heritage, she is not precluded from raising the issue in this appeal given the juvenile court's continuing duty of inquiry under ICWA. (See *In re Isaiah W.* (2016) 1 Cal.5th 1, 10 (*Isaiah W.*).)

child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court" or other specified entities or individuals (rule 5.481(a)(5)(A)); "[t]he residence or domicile of the child, the child's parents, or an Indian custodian is or was in a predominantly Indian community" (rule 5.481(a)(5)(B)); or "[t]he child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government . . ." (rule 5.481(a)(5)(C)). " 'The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a [dependent] child . . . is or may be an Indian child in all dependency proceedings . . . .' " (*In re A.B.* (2008) 164 Cal.App.4th 832, 838 (*A.B.*), quoting § 224.3, subd. (a).)

Mother's challenge on appeal centers on the erroneous minute order from September 24, 2013. She argues that the juvenile court properly ordered DCFS to investigate father's possible Indian heritage following the submission of his September 24 ICWA-020 form and his colloquy with the court that same day in which he provided his grandmother's contact information. But she claims the investigation was thwarted by the minute order, which incorrectly stated the court had already found that father did not have Indian heritage, and instead directed DCFS to investigate Adam D.'s Indian heritage (which Adam D. never actually claimed). As a result of this minute order, mother asserts, DCFS never contacted father's grandmother or otherwise investigated his heritage. Mother also argues that as a result of the error, the court apparently did not

realize father had changed his position when he declared at the September 30, 2013 hearing that he had no Indian heritage, and therefore did not inquire further as to the inconsistency (mother notes that the judges were different at the two hearings).

Mother's argument is unpersuasive. Father, while represented by counsel, unequivocally declared to the court on September 30 that he had no Indian heritage. The court confirmed this was father's position and that he had signed the ICWA-020 so stating. At that point the court no longer had any evidence before it suggesting the children were Indian children—no one else had made such an assertion, and there was no evidence the children or anyone with whom they were connected resided in a predominantly Indian community or had received services or benefits available to Indians. (See Cal. Rules of Court, rule 5.481(a)(5).) In filing his second ICWA-020 stating he had no Indian heritage, father removed the trigger that would otherwise impose a duty of further inquiry on the court and DCFS. In the absence of that trigger, the court was justified in finding no Indian heritage just as it would have been if father had never claimed any Indian heritage in the first place. (See *A.B., supra*, 164 Cal.App.4th at p. 843 ["When both biological parents deny any Indian heritage . . . there is no tribe to notify of the proceedings."].)

Father's second ICWA-020 also rendered any error on the part of the court or DCFS harmless. (See *A.B., supra*, 164 Cal.App.4th at p. 843.) In *A.B.*, the juvenile court failed to inquire as to the mother's Indian heritage before terminating her parental rights. (*Id.* at pp. 838-839.) But after that order had issued, mother filed an ICWA-020 in another dependency matter stating that she did not have Indian heritage as far as she knew.

(*Id.* at pp. 839-840.) Based on that information, the Court of Appeal held that "the inquiry error constitutes harmless error. Since both parents have in judicial proceedings denied having any Indian heritage, resolution of this matter now does not thwart the laudatory purposes of the ICWA. Indeed, a limited reversal and remand for compliance with the ICWA inquiry requirement . . . would serve no purpose other than delay." (*Id.* at p. 843.)

In this case, as in *A.B.*, both parents "have in judicial proceedings denied having any Indian heritage." (*A.B., supra*, 164 Cal.App.4th at p. 843.) Thus, to the extent the erroneous minute order prevented the court and DCFS from inquiring further, such error was harmless and remand "would serve no purpose other than delay." (*Ibid.*)

Mother argues that the error was not harmless because without further inquiry the court could not resolve the inconsistency between father's earlier claim of possible Indian heritage and his later declaration that he had no such heritage. Mother asserts that without resolving the inconsistency the court lacked sufficient basis to find the children had no Indian heritage.

But we do not read father's positions on September 24 and September 30 as inconsistent; instead, father's statements on September 30 answered the question implicitly posed by his earlier statements. From the colloquy on September 24 it is evident that father was highly uncertain whether he had any Indian heritage. He said he "ha[d] not found out the family history," and was "going off based upon what my family has told me in the past." He said, "I can look it up" and "I can ask my grandmother." Six days later, he signed the second ICWA-020

form and officially declared to the court that he was not claiming any Indian heritage. It is reasonable to assume that in those six days father investigated on his own and determined that he had no basis to claim Indian heritage. While it was not father's burden to do so, DCFS and the court certainly could rely on his conclusion: " 'While the social worker and the trial court have a duty to inquire into the child's Indian ancestry, a parent has superior access to this information.' " (*A.B., supra*, 164 Cal.App.4th at p. 843.) There was no inconsistency, and no reason to doubt the validity of father's declaration of no Indian heritage on September 30, whether or not the juvenile court had been aware of father's statements on September 24.

Mother cites cases in which the Court of Appeal reversed the juvenile court's ICWA determinations based on conflicts in the evidence, but they are distinguishable. In *In re L.S.* (2014) 230 Cal.App.4th 1183 (*L.S.*), the mother claimed Blackfoot heritage on an ICWA-020, but according to a DCFS report later retracted this claim when interviewed by a social worker. (*Id.* at pp. 1196-1197.) The report was unclear, however, if the mother then claimed Cherokee heritage, or disclaimed all Indian heritage. (*Id.* at p. 1197.) The Court of Appeal held that "[g]iven the conflicting and inadequate information on mother's claim of Indian heritage," the juvenile court "failed in its duty" by not inquiring further. (*Id.* at p. 1198.)

In *In re Gabriel G.* (2012) 206 Cal.App.4th 1160 (*Gabriel G.*), the father indicated on an ICWA-020 that his paternal grandfather was a member of a Cherokee tribe. (*Id.* at p. 1163.) A social worker then interviewed the father and reported that the father stated that he did not have any Indian heritage. (*Id.* at p. 1167.) The Court of Appeal could not

conclude from this record that the father had no Indian heritage, as it was unclear from the social worker's report what specifically was asked of father. (*Ibid.*) It was possible, for example, that the father simply meant that he himself was not a registered member of the tribe, although some of his relatives were. (*Ibid.*) "In the absence of further inquiry or information that reliably rebutted father's representation that [the child] has specific Cherokee heritage through the paternal grandfather," notice under ICWA was required. (*Id.* at p. 1168.)

Unlike in this case, the evidence of Indian heritage in *L.S.* and *Gabriel G.* was starkly inconsistent. The parents had made affirmative claims of Indian heritage, including naming specific tribes. When they later retracted those claims, they did so not to the court but to a social worker, with an inadequate record of what specifically was discussed. Under these circumstances, the Court of Appeal was rightly concerned that the juvenile court had not taken steps to resolve the discrepancies. Here, in contrast, father was never certain of his heritage, never specified a particular tribe, and later declared in open court while accompanied by counsel that he had no Indian heritage. There was no discrepancy to resolve and no reason for the court to inquire further.

In so holding, we do not mean to understate the potential serious consequences of inaccurate minute orders. At a minimum, the error here resulted in DCFS unnecessarily expending resources to investigate Adam D.'s unclaimed connection to a nonexistent Indian tribe. But given that the error was not prejudicial to mother, nor did it "thwart the laudatory purposes of the ICWA" (*A.B., supra*, 164 Cal.App.4th at p. 843), it

is unnecessary to prolong these proceedings by reversing and remanding for further inquiry.

DISPOSITION

The order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.