Filed 12/19/18 In re R.S. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.S. et al., Persons Coming Under the Juvenile Court Law.	B290032; B290033 (Los Angeles County Super. Ct. No. CK74786)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.S. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County, Brett Bianco, Judge. Conditionally affirmed and remanded with directions.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant R.S.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant C.B.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

This consolidated appeal involves four children—J.S., D.S., S.S., and R.S. (collectively, the Minors)—who share the same parents, defendants and appellants C.B. (Mother) and R.S. (Father).[1] Mother and Father appeal from two orders, one selecting guardianship as the permanent plan for J.S., D.S., and S.S., and one terminating their parental rights over R.S. We consider whether the juvenile court made necessary findings—either express or implied—regarding the applicability of the Indian Child Welfare Act (ICWA), and if so, whether substantial evidence supports the finding that the Los Angeles County Department of Children and Family Services (the Department) complied with the inquiry and notice obligations imposed by ICWA and related provisions of California law.

I. BACKGROUND

A. Overview of the Dependency Proceedings

1. The proceedings concerning J.S., D.S., and S.S.

In December 2014, the Department filed a petition alleging J.S. and D.S. were dependent children under Welfare and

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[1] Father and his son share the same initials. In the remainder of this opinion, we refer only to his son by the initials R.S. Mother also has another child, J.D., who does not share the same father as the Minors but who was also subject to one of the orders at issue. Though Mother appealed the order regarding J.D., she raises no arguable issues as to J.D. in her brief. Accordingly, we dismiss her appeal as to J.D. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 842; *In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Institutions Code section 300, subdivision (b)(1).[2] As pertinent here, the petition alleged J.S. and D.S. were placed at substantial risk of physical harm by Mother and Father's substance abuse. J.S. and D.S. were detained from Mother and Father's custody.

S.S. was born in the spring of 2015. The Department filed another petition, this one seeking to have S.S. declared a dependent child under section 300, subdivisions (b)(1) and (j), for the same reasons alleged in the prior petition concerning J.S. and D.S. S.S. was detained from Mother and Father.

While the Department was investigating the welfare of the children and with whom they should be placed, social workers spoke to paternal grandfather, paternal grandmother, and paternal great-aunt.[3] J.S., D.S., and S.S. were ultimately placed with a non-related extended family member.

At a combined jurisdiction and disposition hearing, the juvenile court assumed jurisdiction over J.S., D.S., and S.S. and ordered family reunification services. The juvenile court continued reunification services for the parents (as to all three children) at subsequent review hearings.

2. Dependency proceedings involving R.S.

R.S. was born in October 2016. A few days later, the Department filed a petition, which it later amended, seeking to

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

[3] The Department also spoke to paternal grandmother about potentially serving as a visit monitor later in the proceedings, and paternal grandmother was present for at least one juvenile court hearing.

have R.S. declared a dependent child under section 300, subdivisions (b)(1) and (j). The operative petition alleged R.S. was at serious risk of physical harm as a result of Mother and Father's substance abuse, Mother's failure to comply with juvenile court orders issued in matters involving R.S.'s siblings, and Father's domestic violence against Mother. The juvenile court detained R.S. from Mother and Father less than two weeks after R.S. was born.

At a combined jurisdiction and disposition hearing in January 2017, the juvenile court sustained the allegations in the petition concerning R.S., declared him a dependent of the court, removed him from Mother and Father's custody, and ordered family reunification services. At the six-month status review hearing, the juvenile court ordered the Department to continue providing family reunification services and set the matter for a contested permanency hearing.

3. Permanency review and planning for all Minors

Mother and Father's reunification services were terminated as to all four Minors at a hearing in October 2017. The juvenile court subsequently held a selection and implementation hearing pursuant to section 366.26. The court ordered permanent plans of legal guardianship for J.S., D.S., and S.S., who it found to be a sibling group, and terminated Mother and Father's parental rights as to R.S.

B. ICWA Facts and Procedure

Before the Department filed the initial petition in this matter concerning D.S. and J.S., Mother informed the Department she had no Indian ancestry. Later in June 2015,

however, Father filed a Parental Notification of Indian Status form indicating he might have Cherokee ancestry. Father also orally informed the juvenile court he potentially had Indian ancestry at a hearing held the same day he filed his Parental Notification of Indian Status form.

So far as the record reveals, the Department did not make any inquiries in response to Father's notification of possible Cherokee heritage at this time. To the contrary, in reports filed after Father's disclosure in the matter regarding J.S., D.S., and S.S., the Department stated ICWA did not apply.

Prior to filing the petition regarding R.S. in October 2016, the Department again asked Father about potential Indian ancestry and he reiterated he might have Cherokee ancestry. When the Department filed the dependency petition, an attachment noted R.S. might have Indian ancestry and identified Father as the source of the information. The Detention Report filed the same day reflects the same information.

Both Father and Mother submitted Parental Notification of Indian Status forms for R.S.'s detention hearing. Father represented his grandparents are or were members of a Cherokee tribe. Mother disclaimed any Indian ancestry. The juvenile court ordered the Department to investigate Father's possible Cherokee heritage.

The Department sent ICWA notices to the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Bureau of Indian Affairs, and the U.S. Department of the Interior on or about October 31, 2016. In early November, Father informed the Department he might also have Seminole heritage. On or about November 14, 2016, the Department sent another set of ICWA

notices, with slightly augmented information, to the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Bureau of Indian Affairs, and the U.S. Department of the Interior.

These November ICWA notices (which, again, were submitted solely for R.S.) included Mother and Father's names, current and former addresses, and places and dates of birth, as well as Father's potential tribal affiliations. They also included the names, dates of birth, and possible tribal affiliations for the Minors' paternal grandmother and grandfather.[4]

No place of birth was reported on the ICWA notice forms regarding the paternal grandparents, and their addresses were reported as "unknown." The same woman's name was listed in three different fields seeking information about the Minors' paternal great-grandmother, but two of these entries listed a birthdate for her in 1940 while the third listed a date in 2016 (which was obviously incorrect). In addition, two of these entries for the paternal great-grandmother stated the woman's date and place of death were "unknown" whereas the third stated "not applicable." Significantly, as to paternal great-grandfathers, the notices identified "John Horse," "John Slaughter" and "John Moon" as possibilities (although "John Horse" was actually listed in a field for information about paternal great-grand*mothers*), but there was little identifying information provided for any of these names. Form fields to be completed with information on the

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[4] Curiously, however, the Department listed the exact same date of birth, January 11, 1964, for Father's mother and his father.

birthdates for all three men were all completed as "unknown" (in some places with a notation "[f]amily did not give any info"); fields for tribal membership of "John Slaughter" were completed but those for "John Moon" and "John Horse" were not (instead, a "[d]oes not apply" notation appears); and no other identifying information was provided. Finally, most of the "optional questions" on the ICWA notice form—asking, among other things, whether the minor in question or his or her family had ever attended an Indian school, lived on a reservation, or received medical treatment at an Indian health clinic—were all completed "unknown," rather than checking a box for "yes" or "no."[5]

In the jurisdiction/disposition report regarding R.S., the Department represented it had sent notices to the Cherokee tribes. It also represented Father subsequently informed the case social worker of his potential Seminole ancestry and the case social worker completed updated ICWA notices three days later. In its discussion of relevant social, cultural, and physical factors, the report noted Father was raised by his grandmother, had "a lot of half siblings from his father," and had three siblings on his mother's side.

The Department filed an amended petition on November 21, 2016, with an attachment listing Father as the only person

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[5] The "optional questions" section of the ICWA notice form also provides space to designate "other relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.)." Two of the names listed as paternal great-grandparents (John Moon and John Horse) were listed in this other relative information section. Two other names were also listed, and for all four of the entries, fields for identifying information were completed as either "unknown" or "[d]oes not apply."

the Department questioned regarding R.S.'s potential Indian ancestry. The attachment stated the social worker had spoken to Father twice, had already submitted ICWA notices to the Cherokee tribes, and had recently been informed by Father that he might have Seminole ancestry as well. The juvenile court's minute order from a hearing on the same date indicated ICWA notices had been sent out.

The Department submitted a last minute information report two months later discussing its efforts to comply with ICWA. In addition to reiterating facts regarding the Department's compliance efforts, the report listed the dates on which the social worker had sent ICWA notices and summarized the responses the Department had received. According to the report, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Seminole Nation of Oklahoma, the Cherokee Nation, and the Seminole Tribe of Florida stated they found no evidence R.S. was a descendant of a tribe member. The Seminole Tribe of Florida, Seminole Nation of Oklahoma, and Cherokee Nation all emphasized their determinations were based on the information provided by the Department. The Cherokee Nation provided the Department with instructions to be followed if the Department "wish[ed] to send additional information." So far as the record reveals, the Eastern Band of Cherokee Indians, the Bureau of Indian Affairs, and the Secretary of the Interior did not respond to the ICWA notices, though return receipts demonstrate the notices were delivered.

At a hearing in January 2017, the juvenile court admitted the Department's last minute information report and attachments in evidence, along with other documents. It did not, however, make any rulings regarding ICWA at the hearing.

A few months later, the Department filed a status review report in advance of R.S.'s six-month review hearing. The report stated ICWA "does not apply" and listed the responses it received from tribes indicating R.S. is not an Indian child. The juvenile court did not address ICWA at the hearing.

The Department's February 2018 section 366.26 report for R.S. again listed the tribes' responses indicating they did not intend to intervene. The Department also "respectfully recommend[ed] that the court find[ ]" ICWA does not apply. The juvenile court made no mention of ICWA at a subsequent hearing in early April 2018. Nor did the juvenile court make ICWA findings at the section 366.26 hearing on April 28, 2018, at which the juvenile court terminated Mother and Father's parental rights with respect to R.S.

II. DISCUSSION

Father and Mother[6] contend the juvenile court's selection and implementation orders are infirm because (1) the court made no ruling on the applicability of ICWA, and (2) the Department did not satisfy its duty of inquiry under ICWA. On the record presented, we proceed on the understanding that the juvenile court implicitly found ICWA did not apply but we hold the Department did not satisfy its duty of inquiry under ICWA and related provisions of California law.

There is no dispute the Department and the juvenile court had reason to know J.S., D.S., S.S., and R.S. might be Indian children under ICWA. Under California law, this gave the

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[6] Mother joins in Father's arguments, and does not present any separate argument on appeal.

Department a duty to further inquire into Father's ancestry—including by interviewing known or readily discovered extended family members who might have pertinent information—before providing ICWA notice to the relevant tribes. Though the record reflects the Department spoke to Father about his ancestry twice and obtained some pertinent information, the Department did not document whether it made any efforts to identify, locate, or interview extended family members who might have knowledge of the Minors' possible Indian ancestry, nor did the Department explain whether it otherwise took steps to discharge its duty of inquiry. We shall therefore order the same remedy prior cases have ordered in similar circumstances: conditional affirmance of the disposition order and a remand to the juvenile court to ensure the Department complies with its inquiry and notice obligations under ICWA and related California law.

A. Overview of ICWA

"Passed in 1978, the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA, or the Act) formalizes federal policy relating to the placement of Indian children outside the family home." (*In re W.B.* (2012) 55 Cal.4th 30, 40.) ICWA was enacted in response to "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.) ICWA was meant "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 . . . ." (25 U.S.C. § 1902.)

"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. (25 U.S.C. § 1903(4); see § 224.1, subd. (a) [adopting federal definitions].)" *(In re Breanna S.* (2017) 8 Cal.App.5th 636, 649, fn. 5 (*Breanna S.*).) "In California, . . . persistent noncompliance with ICWA led the Legislature in 2006 to 'incorporate[ ] ICWA's requirements into California statutory law.' [Citations.]" (*In re Abbigail A.* (2016) 1 Cal.5th 83, 91; see also *Breanna S.*, *supra*, at p. 650 [California law "incorporates and enhances ICWA's requirements"].)

B. The Juvenile Court Implicitly Found ICWA Did Not Apply

The juvenile court is required to make a finding as to whether ICWA applies in a given case. That finding "may be either express or implied." (*In re Asia L.* (2003) 107 Cal.App.4th 498, 506.) Although an explicit ruling is the better practice (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413), "an implicit ruling suffices, at least as long as the reviewing court can be confident that the juvenile court considered the issue and there is no question but that an explicit ruling would conform to the implicit one." (*In re E.W.* (2009) 170 Cal.App.4th 396, 404-405 ["Here the social worker's reports specifically discussed the ICWA issue and included documentation of the notices sent and the negative responses received from the tribes. Given the several

reports . . . specifically discussing the ICWA issue and repeatedly noting that ICWA 'does not apply,' the record reflects an implicit finding concerning the applicability of the ICWA"] (*E.W.*).)

The record here does not indicate the juvenile court ever made an express finding on whether the Minors were Indian children within the meaning of ICWA and related California law. Father contends the lack of an express finding warrants reversal, arguing implicit rulings are disfavored and we can have no confidence the juvenile court made any implied ICWA ruling. He is incorrect on the latter score.

The record indicates the juvenile court was aware of and considered the ICWA issue. The court ordered the Department to investigate Father's possible Indian heritage, noted on the record ICWA notices had been sent out in November 2016, received a last minute information report listing the dates on which the Department had sent ICWA notices and the responses it received, admitted the last minute information report and attachments into evidence, received a subsequent status review report from the Department that stated ICWA "does not apply" and again summarized the responses it received from the notified tribes, and received a report prior to the section 366.26 hearing that "respectfully recommend[ed] that the court find[ ]" ICWA did not apply. Given all this, we will proceed on the understanding the trial court made an implicit finding ICWA does not apply. (Compare *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 702-703 [where "the superior court record contain[ed] no proof that notice was sent to the tribes, that it was properly served, or that it provided the information required by the ICWA," the "juvenile court could not knowingly determine whether the remaining

provisions of the ICWA applied" and the appellate court could not conclude the juvenile court considered the issue].)

C. There Is Insufficient Evidence the Department Satisfied Its Duty of Inquiry Under California Law

The Department concedes it never sent ICWA notices regarding J.S., D.S., or S.S. Father and Mother, in turn, concede that if the Department's ICWA inquiry and completion of IWCA notices regarding R.S. were sufficient, the Department's failure send ICWA notices for J.S., S.S., and D.S. would be harmless error. (See *In re J.M.* (2012) 206 Cal.App.4th 375, 383; *E.W.*, *supra*, 170 Cal.App.4th at pp. 400-402.) For purposes of our analysis, we therefore focus on the sufficiency of the Department's ICWA efforts concerning R.S.

Where, as here, the Department has reason to know an Indian child may be involved in dependency proceedings, it has an affirmative duty to inquire into the child's possible Indian ancestry. (§ 224.3, subd. (c) ["If the court, social worker, or probation officer knows or has reason to know that an Indian child is involved, the social worker or probation officer is required to make further inquiry regarding the possible Indian status of the child . . ."]; Cal. Rules of Court, rule 5.481(a)(4)(A); *Breanna S.*, *supra*, 8 Cal.App.5th at p. 652; *In re Michael V.* (2016) 3 Cal.App.5th 225, 233 (*Michael V.*); see also § 224.3, subd. (a) [the duty to inquire is "affirmative and continuing"].) The Department satisfies its duty of inquiry "by[, among other things,] interviewing the parents, Indian custodian, and extended family members . . . ." (§ 224.3, subd. (c); see also Cal. Rules of Court, rule 5.481(a)(4)(A) [social worker must make further inquiry by "[i]nterviewing the parents . . . and 'extended family

members' as defined in 25 United States Code sections 1901 and 1903(2)" to gather biographical information].[7]) Challenges to the adequacy of ICWA inquiries are reviewed for substantial evidence. (See *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 941-943.)

Based on the record before us, substantial evidence does not support a finding that the Department's inquiry was adequate. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 652; *Michael V.*, *supra*, 3 Cal.App.5th at pp. 235-236.) The Department had an affirmative obligation to interview the parents and extended family members to discover the required identifying information. (§ 224.3, subd. (c).) However, there is no evidence the Department did anything other than speak to Father about his potential Indian ancestry. There is no evidence the Department asked paternal grandmother, paternal grandfather, or paternal great aunt, all of whom had previously spoken to a social worker over the phone, whether they possessed information pertinent to the ICWA inquiry. Nor is there any documentation of whether the Department asked Father if there were any other family members who might have additional information or sought contact information for those individuals. Without some evidence of efforts beyond merely speaking to Father, we cannot deem the Department's efforts sufficient.

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[7] Under Title 25, United States Code, section 1903(2) "'extended family member' shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

(*Breanna S.*, *supra*, at p. 652 [duty of inquiry not satisfied even though the Department interviewed child's mother and grandmother, because neither were asked any questions about maternal grandfather and no efforts were made to locate him]; *Michael V.*, *supra*, at pp. 234-235 [the Department's interview of the mother and review of its own records did not satisfy duty of inquiry where the mother stated her mother might have more information and was possibly living in San Diego, which gave the Department "at least a starting place for its inquiry"]; *In re K.R.* (2018) 20 Cal.App.5th 701, 708 [duty of inquiry not satisfied where record contained no evidence Riverside Department of Social Services (DPSS) attempted to contact other known family members] (*K.R.*); *In re N.G.* (2018) 27 Cal.App.5th 474, 482 [duty of inquiry not satisfied where record did not indicate DPSS sought basic information from relatives who were in contact with DPSS, asked paternal relatives for identifying information regarding lineal ancestors, or attempted to contact other relatives].)

We recognize the Department is not required to document every detail of its investigation. (See, e.g., *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 995 [a silent record does not mean the department failed to make an adequate ICWA inquiry]; see also *In re Charlotte V.* (2016) 6 Cal.App.5th 51, 58.) Nor is the Department required to exhaust every conceivable avenue, no matter how time consuming or likely to be fruitful. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199 [the Department has no duty to "cast about" for information].) However, the Department is obliged to "make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*K.R.*, *supra*,

20 Cal.App.5th at p. 709; see also *In re I.W.* (2009) 180 Cal.App.4th 1517, 1531 [although not all deficiencies in notice are prejudicial error, "strict compliance" with ICWA notice requirements is important].) It "cannot omit from its reports any discussion of its efforts to locate and interview family members who might have pertinent information and then claim that the sufficiency of its efforts cannot be challenged on appeal because the record is silent." (*K.R.*, *supra*, at p. 709.) At the very least, the Department had a duty here to inquire about other relatives who might have pertinent information, and to attempt to interview paternal grandmother, paternal grandfather, and paternal great-aunt regarding ICWA issues. Because the record does not include any evidence of such efforts by the Department, we conclude its investigation was insufficient.

In resisting this result, the Department urges we apply Evidence Code section 664's presumption that an official duty has been regularly performed because there is no evidence to the contrary and because Father and Mother must take the record as they find it because they did not challenge the ICWA notice below. Similar logic was recently refuted by our colleagues in the Fourth District Court of Appeal in *K.R.*, *supra*, 20 Cal.App.5th 701. The court there stated: "[I]n general, an appellant has the burden of producing an adequate record that demonstrates reversible error. [Citation.] However, ICWA compliance presents a unique situation, in that . . . , although the parent has no burden to object to deficiencies in ICWA compliance in the juvenile court, the parent may nevertheless raise the issue on appeal. [Citation.] The purpose of ICWA and the California statutes is to provide notice to the tribe sufficient to allow it to determine whether the child is an Indian child and whether it

wishes to intervene in the proceedings. [Citation.] The parent is in effect acting as a surrogate for the tribe in raising compliance issues on appeal. Appellate review of procedures and rulings that are preserved for review irrespective of any action or inaction on the part of the parent should not be derailed simply because the parent is unable to produce an adequate record." (*Id*. at p. 708.) We find this reasoning persuasive, and adopt it here.

Finally, the Department argues any omissions in the ICWA notices were harmless because the notices contained information that led the noticed tribes to find R.S. was not an Indian child. To be sure, errors or omissions in an ICWA notice may be harmless under some circumstances. (*E.W.*, *supra*, 170 Cal.App.4th at pp. 402-403.) But we cannot conclude the deficiencies in the Department's inquiry and notice efforts were harmless here. Had the Department performed the requisite inquiry, the notices sent to Cherokee and Seminole tribes that were replete with "unknown" designations might have provided additional information, particularly with respect to the Minors' paternal great-grandfather, that would alter the tribes' determinations of Indian status. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 654.)

D. Conditional Affirmance Is the Appropriate Remedy

Where the sole error found on appeal of a dependency court order is the failure to adequately investigate a child's Indian ancestry or to give notice in compliance with ICWA and related California law, the remedy ordered in prior cases has been a conditional affirmance of the order and a remand to the juvenile court with directions. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 656; *Michael V.*, *supra*, 3 Cal.App.5th at p. 236; *In re Kadence P.*

(2015) 241 Cal.App.4th 1376, 1389.) That is the remedy we will order here, but we will tailor our directions in light of the possibility that the Department may have discharged its duty of inquiry prior to sending ICWA notice to the Cherokee and Seminole tribes but merely failed to provide documentation evidencing such compliance.

On remand, the juvenile court shall permit the Department to submit further evidence of its efforts to satisfy its duty of inquiry. A meaningful inquiry must comply with the provisions of section 224.3, subdivision (c) and California Rules of Court, rule 5.481(a)(4)(A), which means a social worker must have, at a minimum, (1) attempted to exhaust Father's own knowledge of any Cherokee or Seminole ancestry, and (2) made adequate efforts to interview any of R.S.'s "extended family members" on Father's side of the family that DCFS is aware of (such as paternal grandmother, grandfather, and great-aunt) or that Father is able to identify as possibly having pertinent information. If any additional evidence presented to the juvenile court demonstrates the Department undertook a meaningful inquiry into Father's claim of Indian heritage prior to sending ICWA notices to the relevant tribes, the juvenile court need only make a finding to that effect on the record or in a minute order.

If, however, there is no documentation demonstrating such an inquiry was undertaken by the Department, the juvenile court shall order the Department to conduct such an inquiry and to submit evidence of the efforts it makes to inquire. If the Department's inquiry produces any additional material information regarding Father's claim of Indian ancestry, the Department must re-notice the pertinent tribe(s) with the

additional information included in the notice.[8] Upon receipt of their responses to any further ICWA notice that may be required, the juvenile court shall then determine whether ICWA-related inquiry and notice requirements have been satisfied and whether the Minors are Indian children. If the court finds the Minors are Indian children, the court shall vacate its existing orders and proceed in compliance with ICWA and related California law. If the court finds the Minors are not Indian children, the section 366.26 orders shall remain in effect.

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[8] If it does not, re-noticing is not required.

DISPOSITION

The juvenile court's section 366.26 orders are conditionally affirmed and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

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