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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re W.M. et al., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

B263766

(Los Angeles County
Super. Ct. No. DK08785)

APPEAL from orders of the Superior Court of Los Angeles County.

Marguerite D. Downing, Judge. Affirmed and remanded with directions.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Mother M.G. appeals from the juvenile court's jurisdictional findings under section 300, subdivision (b) of the Welfare and Institutions Code¹ as to now six-year-old W.M., four-year-old M.M., and three-year-old K.M., claiming there was not substantial evidence that she abused substances or alcohol, or that her use placed her children at substantial risk of harm. Because mother does not challenge the juvenile court's jurisdictional findings based on domestic violence between mother and father, or the findings as to father, who is not a party to this appeal, we find her challenge to jurisdiction is nonjusticiable. And, in any event, mother's claims fail on the merits, as there was substantial evidence that mother's substance abuse put her children at risk.

Mother also challenges the dispositional order removing the children from her care, arguing the juvenile court failed to consider alternatives to removal, and that less drastic means of protecting the children were available. She also contends the juvenile court failed to make an adequate inquiry into father's Native American heritage. We find the juvenile court's dispositional orders are supported by substantial evidence, but agree that a limited remand for further inquiry under the Indian Child Welfare Act of 1978 (ICWA; 25 U.S.C. § 1901 et seq.) is proper.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) on December 16, 2014, when police responded to a report that mother had been kidnapped from the Sam's Hofbrau by father, W.M., Sr. Mother was allegedly forced into father's car. During their investigation, police learned that mother and father had three children. Police were unable to locate mother and father, but found the children at a property in Menifee, owned by father. The children had been left there with an 18-year-old paternal aunt for four days. Police took the children into protective custody.

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

Mother initially refused to cooperate with the investigation. Once the children were taken into custody, mother finally agreed to go to the police station to provide a statement. Once at the police station, mother refused to provide any information about the father's whereabouts, and minimized the situation.

Mother told police that she had been drinking at the strip club where she worked, and that father arrived and found her in the arms of another man. Mother denied she was kidnapped. Father wanted her to leave because she was intoxicated at work.

A Department social worker interviewed mother at the police station. Mother agreed to cooperate with the Department's investigation. Mother told the social worker she lived with a friend in Montebello. Mother had dropped the children off in Menifee on Saturday, and intended to pick them up on Monday, but was unable to because of her work schedule. She denied any substance abuse or mental health issues. She had been in a relationship with father, off and on, since she was 18. The relationship was "full of domestic violence." Father would push, hit and verbally abuse mother. She once had a restraining order against him but it had expired.

Mother and the children had only recently moved to Los Angeles. They previously resided with maternal relatives in Austin, Texas. Mother used to travel to different states to dance, and would leave the children with maternal relatives in Austin. Six weeks earlier, mother decided to relocate to Los Angeles to dance. She first came out alone. A maternal relative had just brought the children out to California. On her way to California, mother had stopped in Las Vegas to try to reconcile her relationship with father. After spending some time with father, she decided she did not want to stay in Las Vegas with him, and came to California. She initially moved in with a boyfriend, but had recently ended that relationship.

Mother minimized the December 16 kidnapping incident, claiming father "wasn't trying to hurt [her], he was mad because [she] was drunk and he just wanted [her] to go home." Mother made a scene because she "was drunk and . . . wasn't in [her] right mind." Mother admitted that she had asked father to let her out of his car, and that he

refused to do so. Mother denied knowing where father lived or how to get in touch with him.

Mother had bruises on her chin, a scratch on her throat, and marks near her left ear. Mother said the marks on her throat and near her ear were hickeys, and the bruise happened when she fell off a table while she was dancing.

Mother admitted to having a history with the Department of Family Protective Services in Texas. M.M. had a seizure and hospital tests revealed she had ecstasy in her system. M.M. had been in father's care at the time. Mother complied with the juvenile court's orders in that case, and the case was closed after she and the children moved to their own apartment. Father had not complied with his case plan, and mother had been awarded custody of the children. According to mother, father used marijuana, but had a medical marijuana card. She denied any use of substances and agreed to submit to an on-demand drug test.

Mother minimized the domestic violence between her and father. She said she presently did not want to be in a relationship with him, but would consider returning to him in the future.

The Department social worker interviewed then five-year-old W.M. on December 16. He reported that "My daddy beats my mommy and my mommy works at a club where she dances. She dances at a club with nice people, not gay people. They get drunk there and mommy and daddy get drunk." When mother and father would fight, "[d]addy hits my mommy and my mom cries and I cry. I get sad because of it." He denied he or his siblings had been physically abused. W.M. did not have any marks or bruises.

Then three-year-old M.M. reported that "mommy and daddy fight." She denied that mother and father lived together. She said father would make mother cry. When asked if the parents hit each other, M.M. reported that "[m]y daddy hits mommy and she bleeds." She had seen mother bleed twice. M.M. also reported that mother worked in a club in downtown Los Angeles, where they play music and dance, and that M.M. had been to the club. "We go to the club. Then my daddy calls my mommy a Bitch. We

don't like the police. The police calls me bitch, they call [W.M.] bitch and daddy a bitch." M.M. also reported that "My mommy and daddy get drunk. They drink beer. . . . My mommy drinks beer." There were no marks or bruises on M.M. and she appeared happy, smart, and outgoing.

Then two-year-old K.M. was too young to make a statement, but appeared healthy and bonded to her siblings. There were no immediate concerns about her health or development.

The day after the kidnapping incident that brought the family to the attention of the Department, a Department social worker attempted to interview mother again by phone, as mother had requested to speak with a supervisor. Mother was upset and irrational, and was yelling and cursing. Mother's friend was also cursing and yelling into the phone. The social worker was concerned that mother was intoxicated, but mother denied using illicit drugs. Mother eventually calmed down and expressed that she was willing to go to a domestic violence shelter. However, when the social worker asked for details about the domestic violence between mother and father, mother denied any domestic violence. She admitted a criminal history involving prostitution. Mother refused to provide any details about father's criminal history or the alleged kidnapping incident, saying she was too intoxicated at the time to remember any details. She also denied any history with child protective services. When reminded about the history she had reported the day before, mother minimized the incident. She reported that she would only drink socially. Mother was incoherent and her thinking was extremely disorganized. She ultimately hung up on the social worker.

The family had a history with child services in California, with a 2011 referral for emotional abuse by father and general neglect by mother. At the time, the family was living in a motel. Father was drinking and smoking marijuana, and he hit mother and slammed her head into a wall. Father fled and mother would not cooperate with law enforcement, and did not seek a restraining order against father. Mother and father participated in a Team Decision-Making Meeting, and agreed to participate in family

maintenance services. Mother later informed the Department she had left father, so the family maintenance case was closed.

Father had an extensive criminal history, including arrests for possession of narcotics and kidnapping, as well as domestic violence convictions. Mother had been arrested for disorderly conduct for intoxication with drugs/alcohol, and had several convictions for prostitution.

The December 19 detention report noted that “[r]easonable efforts were made to prevent or eliminate the need for the child(ren)’s removal from the home. The following Pre-placement Preventative Services were provided but were not effective in preventing or eliminating the need for removal of the children from the home. [¶] Other Services. [¶] Results of Previous Services: [¶] . . . worked with [law enforcement] to locate and reach the father[;] provided mother with a drug test referral[;] interviewed and assessed mother [and] interviewed and assessed [the children].”

On December 19, mother filed a Parental Notification of Indian Status indicating that she had no Indian ancestry. She also filed a Parentage Questionnaire indicating that father had signed the children’s birth certificates.

At the December 19 detention hearing, the juvenile court ordered the children detained, found that ICWA did not apply to mother, and found father to be the presumed father of the children.

On December 23, 2014, father filed a Parental Notification of Indian Status indicating that he may have Indian ancestry. He identified the “Blackfoot” tribe. Father was arraigned on the petition on December 23. The juvenile court’s minutes stated that “father indicates to the court that there maybe [sic] American Indian heritage – Blackfoot tribe.” The juvenile court ordered the Department to notice “Blackfoot tribe, Bureau of Indian Affairs, and Secretary of Interior regarding ICWA issues as to father.”

The Department’s report for the January 28, 2015 jurisdiction and disposition hearing included additional information. Father told the Department that “he thinks his maternal grandfather Albert [S.] told him the family has Blackfoot Indian ancestry” but that father did not know Mr. S.’s whereabouts or how to contact him. Paternal great-

grandmother Ardrena S. stated “her family . . . is of African American descent and they have no relation to an American Indian Tribe.” Father also told the Department that mother had started drinking “last year.”

Mother had not responded to messages left by the Department, and her whereabouts were unknown. However, according to the children’s foster mother, mother had regular visitation with the children.

The report reiterated the same facts concerning the Department’s reasonable efforts to eliminate the need for removal of the children that were stated in the initial detention report.

A January 27 last minute information noted that the Department received additional information from Texas authorities. Texas authorities received a referral in 2012 that M.M. ingested methamphetamine while in father’s care.² The case went to court, but further information was unavailable. Texas authorities had also received a 2013 referral for neglect by father as to W.M. and M.M. The referral was substantiated. There was also a June 2013 referral for neglect as to father based on a domestic violence incident between father and a paternal aunt in a car where the three children were riding. The allegations of neglect were substantiated. Texas case notes indicated that mother often left the children in the care of father while mother traveled. Texas authorities believed mother was engaging in prostitution and that father was her “pimp.” Mother did not cooperate with any of the Texas investigations.

The Department’s March 17, 2015 supplemental report indicated that paternal great-grandmother Mary S. “stated her family . . . is of African American descent and they have no relation to a Native American Indian Tribe.” (An earlier report attributed this statement to a paternal great-grandmother of a different name.)

² Mother later admitted to the Department that she was present during the incident. She denied that she or father used drugs, and believed the drugs ingested by M.M. belonged to a house guest.

Mother reported that she was enrolled in an outpatient substance abuse program. Mother had also enrolled in a domestic violence program, but was terminated from the program after she stopped attending classes. Mother was a no show for four random drug tests. She did not believe the family required the Department's involvement.

Mother and father failed to appear for the March 17, 2015 combined jurisdictional/dispositional hearing. The juvenile court found there was substantial evidence of mother's alcohol and substance abuse, as M.M. had ingested drugs while in mother's care, and mother had failed to show up for her random drug tests.

The juvenile court sustained the following allegations in the petition, as to mother:

“[Under section 300, subdivisions (a) and (b),] mother . . . and father . . . have a history of engaging in violent altercations in the children's presence. On prior occasions, the father struck the mother, causing the mother to sustain bleeding lacerations, marks and bruising. . . . On a prior occasion, the father slammed the mother into a wall. On prior occasions, the father pushed the mother against the mother's will. On 12/16/2014, the father forcefully shoved the mother into a vehicle. The father's violent conduct against the mother endangers the children's physical health and safety and places the children at risk of physical harm, damage and danger.”

“[Under section 300, subdivision b,] mother . . . has a history of substance abuse and is a current abuser of alcohol which renders the mother incapable of providing the children with regular care and supervision. On prior occasions, the mother was under the influence of alcohol while the children were in the mother's care and supervision. The mother's substance abuse endangers the children's physical health and safety and places the children at risk of physical harm and damage.”

The juvenile court also sustained allegations as to father's substance abuse. Mother was ordered to participate in drug and alcohol testing, a full drug and alcohol program with aftercare, domestic violence classes, parenting classes and counseling.

The juvenile court also found that ICWA did not apply, reasoning that the Department “followed up with his mother and found that there was no Indian ancestry.”

The juvenile court found that the Department made reasonable efforts to prevent removal, but that removal was required to protect the children, without clearly explaining

the basis for its determination. Mother did not object or otherwise challenge the adequacy of the juvenile court's findings.

This timely appeal followed.

DISCUSSION

Mother contends the jurisdictional findings under section 300, subdivision (b) relating to her drug and alcohol abuse are unsupported. Mother also contends that insufficient evidence supported the removal of the children. Lastly, she claims the juvenile court failed to clarify an ambiguity in the Department's ICWA inquiry.

We find mother's jurisdictional challenge is nonjusticiable, as mother does not challenge the jurisdictional findings as to father who has not appealed, and has not challenged the jurisdictional findings based on domestic violence. Moreover, substantial evidence supports the juvenile court's dispositional findings. We do, however, find that the adequacy of the Department's inquiry into father's possible Indian heritage is unclear, and therefore order a limited remand to forestall any claim of ICWA error later in the proceedings.

1. Substantial Evidence Supports the Juvenile Court's Jurisdictional Findings

Because mother does not challenge the jurisdictional findings as to father, or as to the domestic violence between mother and father, mother's challenge to jurisdiction based on her drug and alcohol use is nonjusticiable. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490-1491; see also *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 ["The reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds"].)

In any event, mother's claims fail on the merits. The standards for juvenile court jurisdiction under section 300, subdivision (b) are well settled. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) As detailed above, there was ample evidence of a substance abuse history, and current abuse of alcohol.

2. Substantial Evidence Supports the Juvenile Court's Dispositional Findings

Mother contends the Department did not meet its burden of proof for removal of the children, reasoning there was no "clear and convincing" evidence the children were in

danger in mother's care. Mother also contends the juvenile court did not consider alternatives to removal that would have protected the children, such as issuing a stay away order for father, requiring mother to drug test, the provision of in-home services, or unannounced home visits by the Department.

A child may not be removed from a parent or guardian unless there is clear and convincing evidence of "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) A juvenile court's removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

California Rules of Court, rule 5.690(a)(1)(B)(i) requires the Department to include in its report to the juvenile court a "discussion of the reasonable efforts made to prevent or eliminate removal" Section 361, subdivision (d) requires the juvenile court to "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based." Rule 5.695(e) also requires the juvenile court to make findings as to whether reasonable efforts were made. (See *In re Ashly F.* (2014) 225 Cal.App.4th 803, 808 [finding error based on the Department's generic statements, without specification, that "reasonable efforts" to prevent removal were made when the juvenile court made no inquiry into what those reasonable efforts were].)

Respondent contends that any claim of error concerning the adequacy of the juvenile court's consideration of alternatives to removal has been forfeited, as mother did not ask the juvenile court to clarify its finding that there were no reasonable alternatives to removal, and did not otherwise object to the removal findings. We agree. Any

deficiency in the Department's reports or the juvenile court's findings could have readily been cured by an objection from mother. (*In re E.A.* (2012) 209 Cal.App.4th 787, 791.)

Nevertheless, mother's claim lacks merit. Substantial evidence supports the juvenile court's finding that removal was necessary, and that there were no other reasonable means to protect the children. Mother had a long and unresolved history of domestic violence with father, and engaged in domestic violence in front of the children. She continued to minimize and deny father's abuse, stated that she would consider resuming her relationship with him in the future, and was not complying with her domestic violence program. Mother was frequently out of contact with the Department, and uncooperative with its investigation. She had been uncooperative in other investigations by other agencies. There is no reason to infer that if mother were offered any other or different services, the children could have safely remained in her custody. Therefore, any failure by the juvenile court to state the basis for its findings on the record was necessarily harmless. (See *In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 811; *R.H. v. Superior Court* (2012) 209 Cal.4th 364, 374.)

3. ICWA

Mother contends that the juvenile court "failed to clarify an ambiguity in the results of [the Department's] inquiry into Father's Blackfoot heritage." Respondent does not oppose a limited remand for the juvenile court and Department to conduct further inquiry into father's purported Indian ancestry.

Under ICWA, if there is reason to believe a child who is the subject of a dependency proceeding is an Indian child, the child's Indian tribe must be notified of the proceeding and its right to intervene. (25 U.S.C. § 1912(a); see also Welf. & Inst. Code, § 224.3, subd. (b).) Under California law, the juvenile court and the Department have an "affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child" (Welf. & Inst. Code, § 224.3, subd. (a).) Once the juvenile court or Department knows or has reason to know that an Indian child is involved, the Department must inquire further into the child's possible Indian status, by interviewing the parents and extended family, as well as contacting the Bureau of Indian Affairs, the tribes, and

any other person who may have relevant information. (Welf. & Inst. Code, § 224.3, subd. (c).)

Here, father reported that “his maternal grandfather Albert [S.] told him the family has Blackfoot Indian ancestry.” The Department’s reports indicated that it interviewed paternal great-grandmother Ardrena [S.] (father’s grandmother) who stated “her family . . . is of African American descent and they have no relation to an American Indian Tribe.” The Department later attributed this exact same statement to another person, paternal great-grandmother *Mary [S.]* (also father’s grandmother). In view of this inconsistency, we agree that a limited remand is prudent so that the juvenile court and the Department can make further inquiry into father’s Indian heritage, and comply with any obligation to provide notice that might arise. (See *In re Brooke C.* (2005) 127 Cal.App.4th 377, 383-385 [reversal is not required to correct ICWA error at early stage in the proceedings; limited remand for compliance is the appropriate remedy].)

DISPOSITION

The jurisdictional and dispositional orders are affirmed. The case is remanded with directions to conduct further ICWA inquiry.

GRIMES, J.

We concur:

BIGELOW, P. J.

RUBIN, J.