Filed 3/19/18 In re J.S. 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| In re J.S., a Person Coming Under the Juvenile Court Law. | B284868<br>(Los Angeles County Super. Ct. No. DK06018) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CARLOS S.,<br><br>Defendant and Appellant. | |

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

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

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Carlos S. (father) appeals from the juvenile court's order terminating his parental rights as to his child J.S. Father 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] As relevant here, those laws require juvenile courts to inquire whether a child in a dependency proceeding is an Indian child, and if so, to inform the tribe of which the child is a member. (See *In re Isaiah W.* (2016) 1 Cal.5th 1, 5 (*Isaiah W.*).) We affirm.

**BACKGROUND**

Father and Jeannette O. (mother) are the parents of five children including J.S., the child at issue in this appeal. Mother has two other children with a different father.

On June 23, 2014, respondent Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition under section 300 seeking to detain all seven children. The petition was based on mother's and father's history of substance abuse, domestic violence, and physical abuse of the children.

Included with the section 300 petition were seven ICWA-010 forms stating that the children had no known Indian

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

ancestry. The forms were signed by mother. On June 26, 2014, mother submitted an ICWA-020 form stating that she had no Indian ancestry as far as she knew. The record does not indicate that father ever filed an ICWA-020 form.

The court ordered the children detained the day the petition was filed. At a June 26, 2014 hearing, the court found that ICWA did not apply to mother. Father did not appear. The court ordered DCFS to interview father regarding ICWA if DCFS had contact with him. Despite this order, DCFS never interviewed father regarding ICWA although DCFS was in communication with him during subsequent proceedings.

On September 10, 2014, paternal aunt Leticia S. informed DCFS that father had been deported to Mexico, and DCFS confirmed that he was receiving his mail there.[2]

The juvenile court sustained the section 300 petition, as amended, on December 2, 2014. After further proceedings, the court terminated reunification services for mother and father on October 19, 2016, and set a section 366.26 hearing to consider adoption of the children.

In its report for the section 366.26 hearing, DCFS acknowledged that the court had not yet made an ICWA finding as to father. DCFS reported that it had contacted paternal aunt Leticia S. on February 8, 2017, regarding father's ICWA status. She had stated that there was no American Indian ancestry in her family, which was from Mexico.

A hearing was held on April 19, 2017, following which the court issued a minute order stating, "The Court does not have a reason to know that th[ese are] Indian Child[ren], as defined

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[2] Based on the mailing address listed on his notice of appeal, father apparently is still in Mexico.

under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs]."

Following a hearing on June 20, 2017, the court terminated father's and mother's parental rights as to J.S. and ordered adoption as his permanent plan. The court continued the section 366.26 hearings as to the other children.

Father timely appealed from the order regarding J.S.

## DISCUSSION

Father argues that DCFS's failure to ask him about any potential Indian ancestry invalidates the juvenile court's finding that ICWA did not apply. He contends that remand is necessary to comply with ICWA's requirements. We disagree.

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 at p. 8, quoting 25 U.S.C. § 1912(a).) California law states that the juvenile court and DCFS have an "affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child . . . ." (§ 224.3, subd. (a).) The court must order parents to complete the ICWA-020, or Parental Notification of Indian Status form, when they first appear in the proceedings. (Cal. Rules of Court, rule 5.481(a)(2) & (3).) If the court or DCFS knows or has reason to know that an Indian child is involved, DCFS must investigate further by interviewing family members as well as contacting the Bureau of Indian Affairs, the tribes, and any other person who may have relevant information. (§ 224.3, subd. (c).) We review the juvenile court's finding as to whether ICWA applies for substantial evidence. (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251.)

It is undisputed that DCFS failed to follow the court's order to interview father regarding possible Indian ancestry. It is also undisputed that the court never obtained a ICWA-020 form from father as required under the rules of court. But DCFS did inquire of paternal aunt Leticia S., who stated that her family was from Mexico and had no American Indian ancestry. This is substantial evidence supporting the juvenile court's conclusion that ICWA did not apply.

Father correctly notes that this inquiry did not occur until late in the proceedings and asserts that DCFS "at the last minute . . . suddenly scrambled to make a token ICWA inquiry" before the date for the section 366.26 hearing. But even accepting this characterization, the fact remains that DCFS ultimately did make the inquiry, and the information provided substantial evidence that ICWA did not apply.

We note that father does not dispute the information provided by Leticia S., or claim that had DCFS inquired of him directly he would have provided additional or different information that would have triggered ICWA's notice provisions. (See *In re N.E.* (2008) 160 Cal.App.4th 766, 669 [no reversal for failure to conduct ICWA inquiry "where there is absolutely no suggestion by [father] that he in fact has any Indian heritage"].) Nor does he explain how the late inquiry prejudiced him or anyone else in the proceedings. He merely states, without authority, that failure to comply with the "mandatory ICWA inquiry and notice procedure" invalidated the court's ICWA finding. But this is not so absent some indication that further inquiry might have led to a different result. (*In re H.B.* (2008) 161 Cal.App.4th 115, 122 [failure to comply with ICWA's inquiry and notice requirements " 'must be held 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' "].) Here, father points to nothing in the record nor makes any assertions on appeal that call into question Leticia S.'s information; thus, we have no basis to conclude that further inquiry would serve any purpose other than delay.

**DISPOSITION**

The order terminating father's parental rights as to J.S. is affirmed.

HALL, J.*

WE CONCUR:

BIGELOW, P. J.

RUBIN, 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.