

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.H., a Person Coming
Under the Juvenile Court Law.

B296358
(Los Angeles County
Super. Ct. No. CK40178G)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Raymond H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Steven E. Ipson, Juvenile Court Referee. Conditionally reversed and remanded with directions.

Elizabeth A. Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Raymond H. (Father) appeals from the juvenile court's order terminating his parental rights to his daughter, then 23-month-old K.H., under Welfare and Institutions Code section 366.26.¹ Father's sole contention on appeal is that the Los Angeles County Department of Children and Family Services (the Department) and the juvenile court failed to comply with the inquiry and notice provisions of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA). Father argues the Department failed to investigate whether K.H. had American Indian ancestry through maternal relatives and to provide adequate notice to the tribes. We conditionally reverse the order terminating Father's and Mother's (Roxanne H.) parental rights and remand the matter to allow the Department and the juvenile court to remedy the violation of ICWA and California law.²

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

² Although only Father appeals the order, "reversal of the juvenile court order terminating father's parental rights must also result in a reversal of the order terminating [the mother's] parental rights." (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168, fn. 7; see Cal. Rules of Court, rule 5.725(g) ["The purpose of termination of parental rights is to free the dependent child for adoption. Therefore, the court must not terminate the rights of only one parent," except under specified circumstances not present here].)

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Referral*

In March 2017 the Department received a referral alleging Roxanne H. (Mother) tested positive for amphetamines when she checked into the hospital two weeks before K.H.'s birth. The reporting caller stated Mother was uncooperative during her hospital stay, and the caller was concerned Mother would try to leave the hospital early with K.H.

The social worker obtained a removal order to remove K.H. because of the "very high risk for future abuse and neglect." Mother had an extensive unresolved history of substance abuse, had failed to reunify with her six other children, and was untruthful and evasive in her answers. Father had an extensive criminal history, including assault to commit rape in 1986, drug offenses, and a conviction for domestic violence with Mother while she was pregnant with K.H. Both Mother and Father were unemployed and transient.

B. *The Petition and Detention*

On March 22, 2017 the Department filed a petition on behalf of K.H. pursuant to section 300, subdivisions (b)(1), (d), and (j). The petition alleged Mother had a 17-year history of substance abuse, used methamphetamine during her pregnancy with K.H., and tested positive for amphetamine in early March 2017. Mother's five other children were prior dependents of the juvenile court, and her sixth child was a current dependent of the court because of Mother's substance abuse problem.

Mother had convictions for possession of drugs and was a registered substance abuse offender. In addition, Mother had failed to protect two of her children from sexual abuse by Mother's male companions. The petition alleged Father had a history of drug abuse, had convictions for possession and use of illicit drugs, and was a registered substance abuse offender. In addition, Father was convicted of assault to commit rape, and was a registered sex offender.

For the March 22, 2017 detention hearing, Mother and Father filed a parental notification of Indian status form (ICWA-020). Mother stated she may have Cherokee and Blackfoot ancestry. She identified "Uncle Chief" on her maternal side as a member of a federally recognized tribe, and listed his telephone number. Father indicated he did not have American Indian ancestry.

At the detention hearing, the juvenile court detained K.H., and ordered the Department to conduct an ICWA investigation. The March 22, 2017 minute order states, "The social worker is ordered to contact the party claiming possible American Indian heritage and investigate that claim. The social worker is to provide to the court a supplemental report regarding that investigation. Said report should include the details of who was interviewed, dates and places of birth of the relatives as far back as can be ascertained."

C. *The ICWA Investigation*

The May 16, 2017 jurisdiction and disposition report stated Father did not want reunification services. For the IWCA investigation, the social worker interviewed Mother and the maternal grandparents about the family's American Indian

ancestry. Mother told the social worker to speak with the maternal grandmother, and mentioned an uncle she called “Uncle Chief.” The social worker asked maternal grandmother Marion S. several times for information about the family’s American Indian ancestry, but had not received any information from her. Marion S. told the social worker, “I have to speak with my aunt and I haven’t spoken with her in years.” Maternal grandfather James S. stated, “There is a Mary [H.] and she is the maternal great grandmother but I don’t know her birth day but she was born in Natchez, Mississippi. Then there is her mother Martha [R.] and they are from the Ojibwa tribe. Also there is an Uncle named Saint Elmo [H.] from Minnesota and he has Creed, Crow, Cherokee, and Blackfoot but I don’t know anyone’s birth days or anything else. We called my wife’s aunt and are waiting for her to call us back but we haven’t spoken with her for years.”³ The report stated the social worker had “searched the records of a half sibling [for whom] an IWCA ruling had been previously made and found the information regarding the Cherokee nation which included complete names and birth dates.”

On June 2, 2017 the social worker sent the Judicial Council form ICWA-30, Notice of Child Custody Proceeding for Indian Child (ICWA notice), to the Secretary of Interior, the Sacramento Area Director of the Bureau of Indian Affairs, and various Blackfeet, Cherokee, Chippewa, Cree,⁴ Crow, and Ojibwe tribes

³ Father asserts the uncle that Mother calls “Uncle Chief” is likely the uncle the maternal grandfather described as “Saint Elmo [H.]” But it is not clear from the record “Uncle Chief” is the same person as “Saint Elmo [H.]”.

⁴ Although the maternal grandfather stated the maternal grandmother’s family had Blackfoot and Creed heritage, Father

(27 tribes in total). The ICWA notice listed Mother's and Father's names, current addresses, and birth dates, but not their former addresses and birth places.⁵ The ICWA notice identified Mother as having Blackfeet, Cherokee, Chippewa, Cree, Crow and Ojibwe ancestry, and stated Mother was not a registered tribal member.

As for the maternal relatives, the IWCA notice stated the maternal grandparents' full names, current addresses, and birth dates, but not their former addresses and birth places. The IWCA notice listed maternal grandmother Marion S. as having Blackfeet, Cherokee, Chippewa, Cree, Crow and Ojibwe ancestry, and indicated she was not a registered tribal member. In addition, the ICWA notice listed great-grandmother Mary H.'s full name, and the dates of her birth and death, but not her former address, birth place, and place of death. The ICWA notice identified Mary H. as having Blackfeet, Cherokee, Chippewa, Cree, Crow and Ojibwe ancestry, and listed her tribal membership as "[u]nknown (reported to be a registered member)." The ICWA notice also listed the maternal great-grandfather David H.'s name and the dates of his birth and death, but it did not identify his former address, birth place, and place of death. David H. was listed as having Chippewa ancestry, but his tribal membership was "unknown." The IWCA notice did not list other relatives in section 7, subdivision (d), which asked

acknowledges the Department correctly served the ICWA notice on the federally recognized Blackfeet and Cree tribes.

⁵ The ICWA notice stated Mother was born in California, but did not identify the city or county of birth.

for “[o]ther relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.).”⁶

The August 25, 2017 supplemental report stated all the American Indian tribes had received ICWA notice, and indicated that K.H. and her parents were “not members nor are they eligible to enroll in membership.” The report noted K.H.’s “six older siblings have been all declared non IWCA status.” The Department requested the juvenile court make a ruling on K.H.’s ICWA eligibility.

D. *The Jurisdiction and Disposition Hearings*

Mother and Father were not present at the August 29, 2017 jurisdiction hearing. At the hearing, the juvenile court sustained the allegations in the petition pursuant to section 300, subdivisions (b)(1), (d), and (j). The court continued the disposition hearing because Mother requested a contested hearing.

At the October 6, 2017 contested disposition hearing, the parents were not present. Mother’s counsel requested return of K.H. to Mother’s care or family reunification services if the child was removed from her custody. Father’s counsel said Father would submit to an order denying reunification services because Father was a noncustodial parent and was not seeking custody of K.H. After hearing argument of counsel, the court declared K.H. a dependent of the court under section 300, subdivisions (b)(1), (d), and (j), and removed K.H. from her parents’ custody. The court denied family reunification services for Mother under

⁶ The ICWA notice describes the questions in section 7 as “optional questions [which] may be helpful in tracing the ancestry of the child”

section 361.5, subdivisions (b)(10) and (b)(13). In addition, the court denied family reunification services for Father under section 361.5, subdivisions (b)(1) and (b)(16).

After making its findings, the trial court inquired about ICWA notice. Department's counsel stated the Department had sent ICWA notices to the tribes and "did not receive any information indicating any eligibility" for tribal membership. The court found ICWA did not apply.

E. *The Section 366.26 Hearing*

At the March 11, 2019 permanency planning hearing (§ 366.26), Father was present, but not Mother. The juvenile court reiterated its prior finding ICWA did not apply. The court found by clear and convincing evidence K.H. was adoptable, and there were no statutory exceptions to adoption. The court terminated Mother's and Father's parental rights over K.H.

Father timely appealed.

DISCUSSION

A. *ICWA Inquiry and Notice Requirements*

Father contends and we agree the Department failed to conduct a complete inquiry into K.H.'s American Indian ancestry. ICWA provides as to dependency proceedings, "[W]here the court knows or has reason to know that an Indian child is involved, the party seeking . . . termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 5;

In re N.G. (2018) 27 Cal.App.5th 474, 480; *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784 (*Elizabeth M.*.) California law similarly requires notice to the Indian tribe and the parent, legal guardian, or Indian custodian if the court or the Department “knows or has reason to know” the proceeding concerns an Indian child. (Welf. & Inst. Code, § 224.3, subd. (a); see *Elizabeth M.*, at p. 784; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649; Cal. Rules of Court, rule 5.481(b)(1) [notice required “[i]f it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480,” including dependency cases filed under § 300].)

ICWA’s notice requirement is at the heart of ICWA because it “enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe receives the required notice.” (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 5; accord, *In re N.G.*, *supra*, 27 Cal.App.5th at p. 480; see 25 U.S.C. § 1912(a); Welf. & Inst. Code, § 224.3, subd. (d).)

Under ICWA, the Department has an obligation to investigate a child’s potential American Indian ancestry where it has information suggesting the child is a member of a tribe or eligible for membership in a tribe. As we explained in *Elizabeth M.*, “California law, which incorporates and enhances ICWA’s requirements, identifies the circumstances that may constitute reason to know the child is an Indian child as including, without limitation, when a person having an interest in the child, including a member of the child’s extended family, ‘provides information suggesting the child is a member of a tribe

or eligible for membership in a tribe or one or more of the child's biological parents, grandparents or great-grandparents are or were a member of a tribe.” (*Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 784, fn. omitted, quoting § 224.3, former subd. (b)(1); accord, *In re E.H.* (2018) 26 Cal.App.5th 1058, 1068; see § 224.2, subd. (d).) “[O]nce the agency or its social worker has reason to know an Indian child may be involved, the social worker is required, as soon as practicable, to interview the child’s parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child’s membership status or eligibility.” (*Elizabeth M.*, at p. 785, citing § 224.3, former subd. (c); accord, *In re E.H.*, at p. 1068; see § 224.2, subd. (e).) The duty to develop the information concerning whether the child is an Indian child rests with the court and the Department, not the parents or members of the parents’ family. (*Elizabeth M.*, at p. 784; accord, *In re K.R.* (2018) 20 Cal.App.5th 701, 706 [“The court and the agency must act upon information from any source, not just the parents [citations] and the parents’ failure to object in the juvenile court to the deficiencies in the investigation or noticing does not preclude the parent from raising the issue for the first time on appeal”].)

Notice under ICWA must include, “[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child” (25 C.F.R. § 23.111(d)(3) (2019); see Welf. & Inst. Code, § 224.3, subd. (a)(5)(C) [Notice must include “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, . . . as well as their current and former addresses, birth dates, places of birth and death,

tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.”].)

B. *The Department Did Not Adequately Investigate K.H.’s American Indian Ancestry, and the Trial Court Failed To Ensure Compliance with ICWA*

Mother stated on her parental notification of Indian status form that she “may have Indian ancestry,” and listed the Cherokee and Blackfoot tribes. She identified “Uncle Chief” on her maternal side as a member of a federally recognized tribe, and listed his telephone number. At the detention hearing, the juvenile court properly ordered the Department to investigate Mother’s ancestry. The 2017 March 22, minute order states, “The social worker is ordered to contact the party claiming possible American Indian heritage and investigate that claim. The social worker is to provide to the court a supplemental report regarding that investigation. Said report should include the details of who was interviewed, dates and places of birth of the relatives as far back as can be ascertained.”

Even though Mother provided the telephone number for “Uncle Chief,” whom she indicated was a tribal member, the social worker did not attempt to contact him. The May 16, 2017 jurisdiction and disposition report shows the social worker only interviewed Mother and the maternal grandparents, Marion S. and James S. Marion said she would have to speak with her aunt about her family’s American Indian ancestry, and James confirmed they had called and were waiting to hear from Marion’s aunt. But the social worker did not ask Marion or James for the aunt’s contact information or follow up with them to see if they obtained any further information. Further, the

social worker did not ask James for contact information for “an [u]ncle named Saint Elmo H. from Minnesota” who “had Cree[], Crow, Cherokee, and Blackfoot” blood.

Once the Department had reason to believe K.H. could be an Indian child, the Department had an obligation to make “further inquiry as soon as practicable by,” *inter alia*, “[i]nterviewing the parents, Indian custodian, and ‘extended family members’ . . . to gather the information” required to prepare the ICWA notices. (Cal. Rules of Court, rule 5.481(a)(4); *In re K.R.*, *supra*, 20 Cal.App.5th at p. 709 “[A] social services agency has the obligation 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.”) The Department did not fulfill this obligation, nor did the juvenile court carry out its duty to ensure ICWA compliance. (See 25 U.S.C. § 1912(a) [“No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary . . .”]; Welf. & Inst. Code, § 224.3, subd. (d) [same]; Cal. Rules of Court, rule 5.482(a)(1) [same]; *In re K.R.*, at p. 709 “[O]nce there is sufficient information to believe that the children might be Indian children within the meaning of ICWA and the California statutes, ‘responsibility for compliance’ with those statutes ‘falls squarely and affirmatively’ on *both* the social services agency and the court.”].)

Moreover, the June 2, 2017 IWCA notice was inadequate. Notice under ICWA must include, “[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child” (25 C.F.R.

§ 23.111(d)(3) (2019); see Welf. & Inst. Code, § 224.3, subd. (a)(5)(C) [Notice must include “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, . . . as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information of other direct lineal ancestors of the child, and any other identifying information, if known.”].) Although the social worker interviewed Mother for the ICWA investigation, the ICWA notice failed to list Mother’s former address and birth place. The social worker also interviewed the maternal grandparents, but the IWCA notice did not list their former addresses and birthplaces. Further, the ICWA notice did not list the great-grandmother Mary H.’s birth place even though the maternal grandfather said she was born in Natchez, Mississippi.

In addition, the IWCA notice did not list other relatives in section 7, subdivision (d), which asked for “[o]ther relative information (e.g., aunts, uncles, siblings, first and second cousins, stepparents, etc.).” The social worker should have listed information for the great-great-grandmother Martha R., and the great uncle, Saint Elmo H. (See *In re E.H.*, *supra*, 26 Cal.App.5th at p. 1069 [information about child’s great-great-grandparent must be included in ICWA notice “if such information may be relevant in establishing the minor’s American Indian heritage”]; *In re S.E.* (2013) 217 Cal.App.4th 610, 615 [“failure to state name of [child’s] great-great-grandfather,” whom mother claimed was American Indian, in ICWA notice was not harmless error]; *In re C.B.* (2010) 190 Cal.App.4th 102, 147 [“information concerning the children’s great-great-grandfather” should have been included in the IWCA notices].)

We reverse the order terminating parental rights and remand for the juvenile court to ensure the Department has thoroughly investigated whether K.H. has American Indian ancestry, as ordered by the juvenile court on May 31, 2019, and based on that investigation, to send complete notices consistent with the requirements of ICWA (25 U.S.C. § 1912(a)), Welfare and Institutions Code section 224.3, subdivision (a), and California Rules of Court, rule 5.481(b). (*In re N.G.*, *supra*, 27 Cal.App.5th at p. 486 [reversing order terminating mother’s parental rights and ordering Department to obtain complete information for maternal and paternal relatives and provide corrected ICWA notice to tribes]; *In re E.H.*, *supra*, 26 Cal.App.5th at p. 1075 [“The judgment terminating [m]other’s parental rights is reversed for the limited purpose of providing additional proper ICWA notice to the [tribe].”].)

If the Department sends notices under ICWA, and the juvenile court determines K.H. is an Indian child and ICWA applies to these proceedings, the juvenile court must conduct a new section 366.26 hearing and any further necessary proceedings, in compliance with ICWA and related California law. If not, the court shall reinstate the original section 366.26 order. (See *In re N.G.*, *supra*, 27 Cal.App.5th at p. 486; *In re E.H.*, *supra*, 26 Cal.App.5th at pp. 1075-1076.)

DISPOSITION

The order terminating Father’s and Mother’s parental rights under section 366.26 is conditionally reversed, and the matter is remanded to the juvenile court with directions for the juvenile court to ensure the Department has thoroughly

investigated whether K.H. has American Indian ancestry, and based on that investigation, to send complete notices consistent with the requirements of ICWA (25 U.S.C. § 1912(a)), Welfare and Institutions Code section 224.3, subdivision (a), and California Rules of Court, rule 5.481(b). If the juvenile court determines K.H. is an Indian child and ICWA applies to these proceedings, the juvenile court must conduct a new section 366.26 hearing and any necessary further proceedings, in compliance with ICWA and California law. If not, the court shall reinstate the section 366.26 order.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.