Filed 9/17/18 In re S.J. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re S.J., a Person Coming Under the Juvenile Court Law.	B285770 (c/w B286979) (Los Angeles County Super. Ct. No. CK86980)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. TAMARA J., Defendant and Appellant.	

B286979

TAMARA J.,

Petitioner,
v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

APPEAL from an order of the Superior Court of Los Angeles County. Robert S. Wada, Judge. Appeal is conditionally affirmed and remanded with directions;

WRIT PETITION to review order setting hearing under Welfare and Institutions Code section 366.26. Robert S. Wada, Judge. Petition is denied.

Jacques Alexander Love, under appointment by the Court of Appeal, for Appellant Tamara J.

Christina Samons, under appointment, for Petitioner Tamara J.

Dan Szrom and Lisa Wlodarczyk, under appointment, for S.J., a person coming under the juvenile court law.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County

Counsel, for Los Angeles County Department of Children and Family Services.

No appearance by The Superior Court of Los Angeles County.

At a 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f)),[1] the juvenile court found substantial risk to then-nine-year-old S.J. if she were returned to the custody of her mother, Tamara J. The court found Tamara in partial compliance with her case plan and ordered additional reunification services for her. At the 18-month review hearing (§ 366.22), the juvenile court terminated Tamara's reunification services and set a hearing for the selection and implementation of a permanent plan for S.J. (§ 366.26). Tamara filed an appeal from the findings and order made at the 12-month review hearing and a petition for extraordinary writ challenging the court's rulings at the 18-month review hearing.

On appeal Tamara contends the court's finding that S.J. continued to remain at substantial risk of harm if returned to Tamara's custody at the 12-month review hearing was not supported by substantial evidence. She also contends the court and the Los Angeles County Department of Children and Family Services (Department) failed to fully comply with the inquiry and notice requirements of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.). In her petition for extraordinary writ Tamara contends the court's finding that S.J.

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[1] Statutory references are to this code unless otherwise stated.

was at substantial risk of harm if returned to Tamara's custody at the 18-month review hearing was not supported by substantial evidence and the court erred in modifying her visitation from unmonitored to monitored.

Because the Department failed to comply with ICWA and related California inquiry and notice requirements, we remand the matter for the Department and the juvenile court to remedy that violation and otherwise conditionally affirm the court's order at the 12-month review hearing. We deny on the merits Tamara's petition for extraordinary writ.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Initial and Amended Dependency Petitions*

On January 7, 2016 the Department filed a nondetain petition pursuant to section 300 alleging Tamara had a history of domestic violence and had recently engaged in a mutually combative altercation with a male companion in S.J.'s presence. The petition also alleged Tamara had failed to take her prescribed medication for her diagnosed bipolar disorder. In light of a restraining order Tamara obtained against her male companion, the Department believed S.J. remained safe in her mother's care under the supervision of the Department and recommended the court order family preservation services, including mental and developmental health evaluations for S.J. to address S.J.'s diagnosis of genetic deletion syndrome. The court ordered family preservation services for S.J. and Tamara and released S.J. to Tamara's custody pending a jurisdiction hearing.

On February 22, 2016 the Department filed an amended petition adding an allegation that S.J.'s noncustodial presumed father, Dwight B., had a long-standing and violent criminal

history that placed S.J. at substantial risk of harm. The same day the Department also filed an ex parte application to remove S.J. from Tamara's custody, advising the court that Tamara had threatened to harm herself, been placed on an involuntary 72-hour psychiatric hold and requested the Department take temporary custody of S.J. for the child's own safety. The court detained S.J. and, over the Department's objection, ordered unmonitored visitation for Tamara, who had since been discharged from the hospital.

2. *The Jurisdiction and Disposition Hearings*

At the March 8, 2016 jurisdiction hearing the court sustained amended allegations involving domestic violence and Tamara's mental health issues and granted Dwight's request for a DNA test, which later confirmed Dwight's status as S.J.'s genetic father. The court ordered unmonitored visitation for Tamara. At a June 6, 2016 jurisdiction hearing the court sustained amended allegations involving Dwight and continued the matter for disposition.

At the July 28, 2016 disposition hearing the court found substantial danger existed to the physical health of S.J. and there was no reasonable means to protect S.J. without removing her from Tamara's custody. Finding it would be detrimental to S.J. to place her with Dwight, the court declared S.J. a dependent child of the court, removed her from Tamara's custody and ordered family reunification services for both parents. As to Tamara, the court ordered parenting classes, participation in a domestic violence support group, individual counseling and psychiatric care and directed her to take all prescribed psychotropic medication. The court authorized unmonitored visitation for Tamara, including overnight visits a minimum of

two times per week. A six-month review hearing was scheduled for January 26, 2017. Dwight was granted monitored visitation.[2]

3. *Progress Hearing and Tamara's Section 388 Petition*

In a September 2016 progress report the Department stated Tamara appeared to be in full compliance with her case plan. Tamara had completed parenting and domestic violence classes and was continuing to participate in individual therapy and to receive medication management for her bipolar disorder. She had consistently visited with S.J., and their visits were going well. Nonetheless, the Department reported there were unresolved issues that would place S.J. at substantial risk of harm if she were returned to Tamara's custody. The social worker explained Tamara continued to engage in relationships with "inappropriate men" despite Tamara's substantial history of domestic abuse in multiple past relationships.[3] In addition, Tamara had requested to continue relationships with these men away from the home and outside of S.J.'s presence, which concerned the Department because there were no safety precautions put in place to ensure S.J. would be appropriately supervised. While Tamara appeared to be on a constructive path, the Department believed more time was needed to ensure she remained consistent with her medication for bipolar disorder, addressed her own recent diagnosis of a serious medical condition

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[2] Dwight appealed. We affirmed the juvenile court's jurisdiction finding and disposition order. (See *In re S.J.* (Aug. 14, 2017, B277525) [nonpub. opn.].)

[3] S.J. had been the subject of two prior referrals to the Department following incidents of domestic violence between Tamara and different male companions.

and gained insight into her history of domestic violence. The Department recommended further family reunification services, including a positive parenting program and parent/child interaction therapy or conjoint therapy with S.J. to assist Tamara in developing skills to supervise and care for S.J. After reviewing the Department's report, the court left all prior orders in place and continued the matter for the six-month review hearing (§ 366.21, subd. (e)).

In November 2016 Tamara filed a section 388 petition seeking an order returning S.J. to her custody. Tamara argued she had fully complied with her case plan and no current danger to S.J. existed. In response to the petition the Department reported Tamara had brought an unapproved nonrelative male companion to her visit with S.J. and falsely told the Department he was a relative. The Department recognized that Tamara was fully compliant with her parenting and domestic violence classes, but stated she had not yet been able to apply the skills she learned. In the Department's view, Tamara continued to minimize her history of domestic violence. The court set the matter for a contested section 388 hearing on January 20, 2017. The hearing was continued at Tamara's counsel's request to March 21, 2017, the date of the scheduled six-month review hearing, to allow Tamara's counsel more time to prepare. Tamara's unmonitored visitation with S.J., including overnight and weekend visits, continued without change.

4. *The March 2017 Progress Hearing*

In a last-minute information for the court filed March 21, 2017, the Department reported Tamara had taken S.J. during one of her weekend visits to see Dwight and his relatives even though Dwight's visitation was to be monitored and neither Tamara nor Dwight's relatives had been approved as monitors. Tamara had initially denied taking S.J. to visit with Dwight and told the Department she and S.J. had gone to see a friend and mentor of Tamara's. When confronted with contrary information obtained by the social worker, Tamara admitted she and S.J. had seen Dwight. Tamara acknowledged she knew at the time of the visit she was violating the court's order but insisted Dwight had pressured her and she eventually relented.

The court also considered Tamara's and Dwight's newly filed requests for competing restraining orders. Dwight's application alleged that, during a dinner with Tamara in March 2017, Tamara struck Dwight in the arm and face with her fist. In her application for a restraining order Tamara claimed Dwight was continuing to contact her against her wishes and sending her threatening text messages. The court issued a temporary restraining order enjoining Tamara from contacting Dwight and ordering her to stay 100 yards or more away from Dwight at all times. The court stated it would consider Tamara's application at the next hearing. Due to court congestion and over Tamara's objection, the court continued the contested six-month review hearing and the section 388 hearing to May 20, 2017, the date of the scheduled 12-month review hearing. The court also ordered the Department to arrange for Tamara and S.J. to participate in parent/child interaction therapy.

5. *The Combined Six- and 12-month Review Hearing and the Hearing on Tamara's Section 388 Petition*

At the combined six- and 12-month review hearing Tamara emphasized her completion of parenting and domestic violence classes ordered by the court and her consistent and unmonitored visitation with S.J., including weekend and overnights, which occurred without incident. In addition, Tamara's therapist reported on March 19, 2017 that Tamara had completed individual therapy, parenting education, domestic violence and anger management classes. Tamara's licensed marriage and family counselor opined Tamara had "successfully met her therapeutic goals of reducing her anger outbursts, utilizing positive coping skills, understanding positive parenting skills, and understanding the red flags of domestic violence. [Tamara] was consistent throughout her entire program and displayed positive improvements in her communication skills."

The Department acknowledged Tamara's completion of her individual therapy and domestic violence classes (although not the more recently ordered parent/child interaction therapy), but expressed concern that Tamara had not had therapy since December 2016 and continued to suffer from emotional outbursts, at least one of which culminated in Tamara hitting Dwight in the face at dinner and the issuance of a temporary restraining order against her. Concerned about Tamara's emotional instability and her continued minimization of her involvement in domestic violence, the Department urged the court to continue reunification services for an additional six months with the objective of returning S.J. to Tamara's custody.

S.J.'s counsel also expressed concern about Tamara's emotional stability and argued S.J. would be at substantial risk

of harm if returned to Tamara's custody at the 12-month review hearing. S.J.'s counsel pointed out S.J.'s multiple special needs (chromosomal deletion syndrome, learning disabilities, moderate intellectual disability and history of seizures) and feared Tamara's instability undermined her ability to care for S.J. Tamara had also just started parent/child interaction therapy, and, S.J.'s counsel argued, more time was needed for Tamara to learn to interact with S.J. in an emotionally stable manner. At the conclusion of the hearing the court took all matters under submission.

On June 20, 2017 the court found the conditions that justified the court's jurisdiction had not been resolved and that return of S.J. to Tamara's (or Dwight's) custody would create a substantial risk of detriment to S.J.'s safety, protection and well-being. The court found Tamara in partial, albeit substantial, compliance with her revised case plan—she had completed "a number of programs and ha[d] made significant progress in resolving the problems that led to the removal of [S.J.] and demonstrated the capacity and the ability to complete the objectives of the treatment plan and to provide for [S.J.]'s safety, protection and physical and emotional health and special needs." However, it continued, "the court still . . . feels at this time" that return of S.J. to Tamara's custody would be detrimental to S.J. For the same reasons the court denied Tamara's section 388 petition. The court found a substantial probability that S.J. could be returned to Tamara's custody by the 18-month permanency planning hearing (§ 366.22) and set that hearing for August 17, 2017.

Tamara filed a notice of appeal identifying the courts findings and orders at the 12-month review hearing.

6. *The 18-month Permanency Planning Hearing*

In its August 17, 2017 report for the section 366.22 permanency planning hearing, the Department stated Tamara and S.J.'s parent/child interaction therapy had been very productive and Tamara's visitation was consistent and appropriate. Tamara continued to receive psychiatric care and medication management. The Department recommended S.J. be returned to Tamara's custody with family preservation services and continued court supervision. Because Dwight requested the permanency review hearing be continued for a contest to permit him to address issues relating to his own visitation and his concerns about return of S.J. to Tamara's custody, the court continued the section 366.22 hearing for a contest to October 3, 2017. The court permitted S.J. to participate in an "extended visit" with Tamara,[4] provided Tamara continue her therapy and family preservation services. Dwight's visits remained monitored. On September 26, 2017 the Department prepared a supplemental report, filed September 28, 2017, reiterating its recommendation to return S.J. to Tamara's custody.

On October 3, 2017 Tamara served and filed a request for a restraining order against Dwight, alleging under penalty of perjury that Dwight forced his way into Tamara's home on September 27, 2017, assaulted her and attempted to take S.J. Tamara reported the incident to the police. The court continued the permanency planning review hearing to November 1, 2017

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[4] It is generally inconsistent for the juvenile court to find a child is at substantial risk of harm if returned to his or her parent's custody and to simultaneously grant that parent extended visitation with the child. (See *Savannah B. v. Superior Court* (2000) 81 Cal.App.4th 158, 162.)

and granted Tamara another extended, unmonitored 29-day visit with S.J. The court also granted Tamara a temporary restraining order protecting her and S.J. from Dwight until it could consider the merits of Tamara's allegations.

The Department investigated Dwight's purported assault of Tamara and Tamara's progress with her therapists. On October 11, 2017 Tamara's health care provider reported that Tamara's behavior and her commitment to her parent/child interaction therapy had noticeably changed since S.J. had been with her on an extended visit. Tamara had not consistently attended therapy and had failed to bring S.J. to her therapy sessions. Tamara continued to call the therapist on the telephone in an agitated state, ranting about Dwight and angry that no one believed her when she told them he was dangerous.

On October 18, 2017 Tamara's individual therapist at Kedren Community Health Center, Inc. also reported that Tamara had not been consistent with her therapy and had cancelled her most recent medication management evaluation. It appeared Tamara had stopped taking her medication. On the positive side, the therapist also noted Tamara had "been forthcoming in sharing experiences and ha[d] stated her willingness to receive assistance to improve her mood and reactions."

The social worker reported Tamara's recent conversations with her on the telephone were unintelligible and rambling. After being confronted with proof the assault Tamara had alleged in her request for restraining order did not occur, Tamara admitted her accusations were false. She explained she had not wanted S.J. exposed to her father's violence and drug use and made up the assault out of fear for her child. Tamara told her

therapist that, in hindsight, it was a mistake to lie and it would probably "backfire."

On October 26, 2017 Tamara was again placed on a 72-hour psychiatric hold after she reported to her case manager that she was experiencing "unsafe thoughts and unsafe plans." Tamara was discharged on October 30, 2017.

On November 1, 2017 the Department filed a revised recommendation urging the juvenile court to terminate both parents' reunification services and set a selection and implementation hearing. In light of the Department's change in recommendation, the court set the section 366.22 hearing for a contest on November 29, 2017. The court ordered monitored visitation for Tamara a minimum of three times per week for three hours. The court also extended the temporary restraining order against Dwight until November 29, 2017.

At the November 29, 2017 18-month review hearing, Tamara and the Department submitted on the written reports and other documentary evidence without presenting additional witnesses or evidence. The Department reported that, while Tamara had initially been doing well with her case plan and on the path to reunify with S.J., it had become clear in more recent months, as pressures of extended visitation with S.J. mounted, the issues that had resulted in dependency jurisdiction remained unresolved. Tamara continued to struggle with her mental health and had become inconsistent in her own treatment and medication management. She had also allowed individuals not approved by the Department into the home on three different occasions and permitted S.J. to have an unmonitored visit with Dwight. In addition, Tamara filed a false police report and an application for restraining order against Dwight accusing him of

assault and including S.J. in her fabricated story, telling the court in her application it was S.J. who had dialed the police emergency number while her father assaulted Tamara. The Department urged the court to terminate reunification services and set a selection and implementation hearing with a permanent plan to free S.J. for adoption.

Tamara requested the court grant her a home-of-parent order or, in the alternative, further reunification services. Tamara emphasized she had participated in, and completed, everything the court had ordered: individual counseling, a domestic violence support group and parenting classes. She was currently under the care of a psychiatrist, and her medication was being appropriately managed. She had begun, and was benefitting from, parent-child interaction therapy with S.J. Although she had not been able to participate in many individual counseling sessions since August 2017, Tamara stated it was not her fault—the counselor had few appointments available. Moreover, as her therapist told the Department, Tamara had demonstrated good insight into her psychiatric condition. Even S.J. had reported Tamara's coping skills had improved. In addition, Tamara insisted, there was no evidence S.J. had suffered any harm during her lengthy visitation with Tamara. Although Tamara had falsely accused Dwight of assault in reports made to police and the court and had involved S.J. in the lie, she claimed she did not then understand the import of her actions or how they would impact her reunification with S.J. After discussing the matter with her therapist, she developed new insight into her behavior. Finally, although Tamara had again been placed on a psychiatric hold in late October 2016, she urged the court not to hold that against her. Her breakdown was

temporary and engendered by the very real and understandable fear of losing custody of her child.

S.J.'s counsel urged the court to terminate Tamara's reunification services, emphasizing Tamara's exposure of S.J. to unmonitored visitation by unapproved adults in violation of court orders, Tamara's violation of court orders and false accusations of Dwight's recent domestic abuse to police, social workers and the court. S.J.'s counsel also identified S.J.'s special needs and once again expressed concern that Tamara's emotional instability and inconsistency in meeting her own therapeutic requirements would place S.J. at continued and substantial risk of harm if returned to Tamara's custody.

After taking the matter under submission, on December 6, 2017 the juvenile court terminated reunification services for both parents. Citing Tamara's violation of court orders, inconsistent participation in therapy and medication management, false allegations against Dwight and continued emotional instability, the court found return of S.J. to Tamara's custody would be detrimental to S.J. The court set a selection and implementation hearing for April 5, 2018.

7. *Tamara's Petition for Extraordinary Writ*

Tamara filed her petition for extraordinary writ on April 30, 2018 seeking an order vacating the juvenile court's termination of her reunification services and directing the court to issue a new order returning S.J. to Tamara's custody or, in the alternative, providing Tamara with additional reunification services. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452.) At Tamara's request we stayed the section 366.26 selection and implementation hearing pending further order of the court. On May 2, 2018 we issued an order to show cause as to why the relief

Tamara requested in her petition should not be granted. On May 10, 2018 S.J.'s counsel filed a letter brief on S.J.'s behalf requesting the court deny Tamara's writ petition for the same reasons she identified at the 18-month review hearing. On May 18, 2018 the Department filed its response

8. *ICWA Inquiry and Notice*

On the day of the detention hearing in January 2016, Tamara told the Department and the court she may have Indian ancestry through the Cherokee and Blackfeet tribes: Her maternal great-grandfather was "full-fledged" Cherokee and her Blackfeet ancestry was "on her dad's side." The juvenile court ordered the Department to inquire further with Tamara about S.J.'s Indian ancestry, provide a report to the court detailing the investigation and, following completion of its investigation, to provide notice to the relevant tribes. Dwight later told the Department he had Cherokee ancestry through his grandfather.

On February 24, 2016 the Department mailed notices to the relevant Blackfeet and Cherokee tribes, the Sacramento Director of the Bureau of Indian Affairs and the Secretary of the Interior. The notices included the names and known birthdates of S.J.'s parents and maternal and paternal grandparents and great grandparents. The Blackfeet tribe and two Cherokee tribes, the United Keetoowah Band of Cherokee Indians in Oklahoma and the Eastern Band of Cherokee Indians, responded to the notices, each informing the Department S.J. was not eligible for enrollment. However, a third Cherokee tribe, the Cherokee Nation, responded by stating the information included in the notice was incomplete. The tribe requested the birthdates of all identified maternal and paternal ancestors, the maiden

names of the women relatives listed in the notice, if known, and the middle name of S.J.'s paternal great grandfather, William B.

On March 16, 2016 the Department wrote to Tamara and Dwight asking each of them to provide additional information in their possession as to Cherokee and Blackfeet ancestry and informed them specifically of the Cherokee Nation's request for information concerning identified ancestors. On April 20, 2016 the court found the tribes had been properly noticed and the Department was awaiting responses.

At the June 6, 2016 jurisdiction hearing involving the allegation pertaining to Dwight, the court stated it had received responses from all relevant tribes and concluded ICWA did not apply. Neither the court nor the Department addressed the Cherokee Nation's request for additional information or whether and to what extent the Department had sought to comply with that request. Nothing in the record before us indicates any additional ICWA inquiries or findings were made at subsequent hearings.

CONTENTIONS

Tamara contends the court's findings at the 12-month and 18-month review hearings that there existed a continuing, substantial risk of harm if S.J. were returned to her custody were not supported by substantial evidence. She also contends the court and the Department failed to comply with ICWA's inquiry and notice requirements and the court abused its discretion at the 18-month review hearing in modifying her visitation from unmonitored to monitored.

DISCUSSION

1. *Governing Law and Standard of Review*

When a child has been declared a dependent of the juvenile court and placed under court supervision, the juvenile court is required under the statutory scheme to conduct a series of review hearings. (See § 366.21, subds. (e) (six-month hearing), (f) (12-month hearing); § 366.22 (18-month hearing, when appropriate); see also *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845 [describing statutory scheme].) At each of these review hearings, the court must return the child to the custody of his or her parents or legal guardian unless it expressly finds, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§§ 366.21, subds. (e), (f), 366.22.) "'In evaluating detriment, the juvenile court shall consider the extent to which the parent participated in reunification services'" as well as "'the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement.'" (*In re E.D.* (2013) 217 Cal.App.4th 960, 966.)

A parent's full compliance with his or her case plan, while certainly relevant to the detriment determination, does not guarantee return of the child to the parent's custody. (*In re Jacob P.* (2007) 157 Cal.App.4th 819, 830 [although "usually the case, a parent's compliance with the case plan is not a guarantee the child will be returned to the parent"]; *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705 [same].) Other factors to be considered in determining detriment may include whether the parent maintains relationships with persons whose presence will be detrimental to the child; the parent's

instability; and how the parent has conducted himself or herself in relation to the child. (*Constance K.,* at pp. 704-705 [citing cases].) The critical inquiry is the effect return of the child to parental custody would have on the physical or emotional well-being of the child at the time of the review hearing. (§ 366.21, subds. (e), (f); *In re Joseph B.* (1996) 42 Cal.App.4th 890, 900.)

We review the juvenile court's finding of detriment for substantial evidence. (*In re B.S.* (2012) 209 Cal.App.4th 246, 252; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) Under this standard we inquire only whether there is any evidence, contradicted or uncontradicted, that supports the court's determination. We resolve all conflicts in support of the determination, indulge in all legitimate inferences to uphold the findings and may not substitute our deductions for those of the juvenile court. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.)

2. *The Court's Detriment Finding at the 12-month Review Hearing Was Supported by Substantial Evidence*

Tamara contends the court's finding of risk of detriment to S.J. if returned to Tamara's custody at the 12-month review hearing was not supported by substantial evidence. In support of her argument Tamara emphasizes that, by the time of the June 2017 hearing, she had completed several court-ordered programs, was fully participating in others and had consistently visited with S.J. "without incident." Despite undisputed evidence of her full compliance with her case plan, however, the court found her only in "partial compliance." Had the court properly understood

Tamara was in full compliance, she insists, it would have returned S.J. to her custody.

The record belies Tamara's position. Although it described Tamara's progress as "partial," the court was well aware of Tamara's compliance with her programs. Its concern in returning S.J. to Tamara's custody was not Tamara's lack of compliance, but her continued minimization of the domestic violence in which she was involved and its effect on S.J. The court stated, "Mere participation in services required by a reunification plan does not mean that the child should be returned. The question . . . is whether the parent has made significant progress to allow the child to be returned safely. Although [Tamara] has completed several parenting classes, [she] is not yet applying the skills learned when dealing with the child." The court cited Tamara's assault of Dwight during dinner and the social worker's report, supported by observations from Tamara's mentor, that Tamara continued to suffer emotional outbursts. This evidence fully supports the court's determination at the hearing that a substantial risk of detriment to S.J. existed if she were returned to Tamara.

3. *Remand Is Necessary for the Court and the Department To Comply with ICWA*

ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8; *In re W.B.* (2012) 55 Cal.4th 30, 47.) For purposes of ICWA, an "Indian child" is an unmarried individual under age 18 who is either a member of a federally

recognized Indian tribe or is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) [definition of "'Indian child'"] & (8) [definition of "'Indian tribe'"]; see Welf. & Inst. Code, § 224.1, subd. (a) [adopting federal definitions].)

Notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the subject of a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. (*In re Isaiah W., supra,* 1 Cal.5th at pp. 8-9.) Accordingly, ICWA requires that "[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe" of the pending proceedings and its right to intervene. (25 U.S.C § 1912(a).) Similarly, California law requires notice to the parent, legal guardian or Indian custodian and the Indian child's tribe in accordance with section 224.2, subdivision (a)(5), if the Department or court "knows or has reason to know that an Indian child is involved" in the proceedings. (§ 224.3, subd. (d); see *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649; *In re Michael V.* (2016) 3 Cal.App.5th 225, 232; Cal. Rules of Court, rule 5.481(b)(1) [notice is 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," which includes all dependency cases filed under section 300].)

Although ICWA itself does not define "reason to know," 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." (§ 224.3, subd. (b)(1); see *In re Elizabeth M., supra,* 19 Cal.App.5th at p. 784; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 650.) California law requires that ICWA notices include "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known." (§ 224.2, subd. (a)(5)(C).)[5]

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[5] New federal regulations to implement ICWA, applicable to proceedings initiated on or after December 12, 2016 (25 C.F.R. §§ 23.2, 23.143), specify a court has "reason to know" the child is an Indian child if "[a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child." (25 C.F.R. § 23.107(c)(2); see *In re Elizabeth M.*, *supra,* 19 Cal.App.5th at p. 785.) The new ICWA regulations require that notice include, in addition to information about the child and his or her parents, "[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." (25 C.F.R. §§ 23.11(a), 23.111(d)(1)-(3); see *In re Elizabeth M.,* at pp. 784-785.)

The Judicial Council's mandatory form, Notice of Child Custody Proceeding for Indian Child (Indian Child Welfare Act), ICWA-030, adopted effective January 1, 2008 and used by the Department in this case, includes boxes for the required information, including birth date and place, for each parent, each parent's biological mother and father (the child's maternal and paternal grandparents), the former or maiden surnames of relatives, and each parent's four biological grandparents (the child's maternal and paternal great-grandparents).

The Department has conceded it omitted statutorily required information from the notices it sent to the tribes: Although Tamara informed the Department at the initial detention hearing and in the Department's subsequent investigation that her grandfather was "full-fledged" Cherokee and her maternal great-grandfather, Nathan S., was Cherokee, the Department's notices to the tribes omitted any mention of Nathan S. and listed as "unknown" Tamara's grandfather's tribe rather than identifying the tribe as Cherokee. The notices also omitted maiden names of S.J.'s relatives. In addition, after receiving a response from the Cherokee Nation that more information was required under ICWA, the Department's sole (and, as it acknowledges, inadequate) response was to send letters to Tamara and Dwight to obtain additional information. No additional follow-up was performed by the Department or the court despite numerous opportunities to inquire further of both parents about the information requested. As the Department concedes, more was required. (See *In re Breanna S., supra,* 8 Cal.App.5th at p. 652 [it is the Department's duty to seek out the information, not the obligation of family members to

volunteer it]; *In re Michael V., supra,* 3 Cal.App.5th at p. 236 [same].)

Given the deficiencies in the notices sent to the tribes and the Department's failure to adequately investigate S.J.'s Indian ancestry, we conditionally affirm the court's findings and orders at the 12-month review hearing and remand the matter for the Department to adequately investigate S.J.'s Indian ancestry and to send new, ICWA-compliant notices to the Secretary of the Interior, the Blackfeet tribe and the three Cherokee tribes. The Department shall thereafter notify the court of its actions and file certified mail return receipts for the new ICWA notices, together with any responses received. The court shall then determine whether ICWA and state law inquiry and notice requirements have been satisfied and whether S.J. is an Indian child. If the court finds S.J. is an Indian child, the court shall conduct new proceedings in compliance with ICWA and related California law. If the court finds S.J. is not an Indian child, the court's original order at the 12-month review hearing remains in effect.

4. *Tamara's Petition for Extraordinary Writ*[6]

a. *Substantial evidence supports the juvenile court's detriment finding at the 18-month review hearing*

Tamara's contention the court's detriment finding at the 18-month review hearing was not supported by substantial evidence also fails. Although Tamara had initially made

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[6] We address Tamara's petition in the event the court finds S.J. is not an Indian child following proper inquiry and notice. If S.J. is found on remand to be an Indian child, the court's obligation to conduct new hearings in compliance with ICWA would render Tamara's petition moot.

substantial strides to comply with her case plan, including participation and completion of several programs, she failed to ameliorate the problems that had led to dependency jurisdiction. In particular, Tamara continued to minimize her history of domestic violence, took S.J. on an unmonitored visit with Dwight in violation of court orders and assaulted Dwight. By October 2017, rather than demonstrating the newly acquired parental insight the court had hoped for when it granted further reunification services at the 12-month review hearing, Tamara had stopped taking her medication as prescribed, missed therapy appointments, enveloped S.J. in a scheme to falsely accuse Dwight of assault and was ultimately hospitalized on an involuntary 72-hour psychiatric hold. To be sure, after her discharge from the hospital, Tamara once again regrouped. She resumed therapy and became medication compliant. But the inconsistency and mental instability Tamara had demonstrated in the two months leading up to the 18-month review hearing was a sufficient evidentiary basis for the court to conclude that, despite having been provided with reasonable services, Tamara had not fully appreciated and adequately addressed the domestic violence and mental health problems that had led to the assumption of dependency jurisdiction. In short, substantial evidence supported the court's finding that returning S.J. to Tamara's custody at that time would have been detrimental to S.J.

b. *The juvenile court did not abuse its discretion when it changed Tamara's visitation from unmonitored to monitored*

When the juvenile court terminates reunification services and orders a selection and implementation hearing under section 366.26, the court must continue to permit the parent to

visit the child unless it finds visitation would be detrimental to the child. (§ 366.22, subd. (a)(3); *In re D.B.* (2013) 217 Cal.App.4th 1080, 1090.) We review an order setting visitation terms for abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) We may reverse only when the court has exercised its discretion in an arbitrary or irrational manner. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Maya L.* (2014) 232 Cal.App.4th 81, 102.)

Tamara contends the court's change of its prior visitation from unmonitored to monitored following termination of reunification services was arbitrary. At the time of the contested 18-month review hearing, Tamara was receiving therapy and was medication compliant; and there had been no evidence of any safety risk to S.J. in Tamara's presence. Although Tamara had brought S.J. to see Dwight without an approved monitor in violation of court orders and had punched Dwight during an argument, the court had granted unmonitored visitation at the 12-month review hearing. The only material change since that hearing was Tamara's temporary, involuntarily hospitalization. Far from evidencing a threat of harm to S.J., Tamara argues that intervention was productive, helping her appreciate her circumstances and resume the therapy she required to better supervise S.J.

Tamara's characterization of events leading up to the 18-month review hearing is incomplete. Omitted from her account is evidence that, while S.J. was in her custody on an extended visit, Tamara had become increasingly mentally unstable. She failed to attend therapy sessions or take her medication and exhibited erratic and concerning behavior, including making false allegations of abuse against Dwight.

Although Tamara returned to a more consistent therapeutic regime after her discharge from the hospital in late October 2017, her renewed commitment at the time of the November 29, 2017 hearing was still fresh. The court lacked confidence that S.J. would be safe in Tamara's presence, particularly considering Tamara's inconsistent history. Tamara may disagree with that assessment, but the court's determination was not arbitrary and did not constitute an abuse of discretion.

DISPOSITION

The court's findings and order at the November 29, 2017 12-month review hearing are conditionally affirmed. The matter is remanded to the juvenile court for full compliance with the inquiry and notice provisions of ICWA and California law and for further proceedings not inconsistent with this opinion. Tamara's petition for extraordinary writ is denied on the merits.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.