Filed 9/19/12 In re J.R. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.R., JR. II, a Person Coming Under the Juvenile Court Law.	2d Juv. No. B239055 (Super. Ct. No. J068452) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. J.R., JR., Defendant and Appellant.	

J.R., Jr. (father) appeals the juvenile court's order terminating parental rights and selecting adoption as the permanent plan for his minor child J.R., Jr. II (J.R.) (Welf. & Inst. Code,[1] § 366.26 et seq.). Father contends that Ventura County Human Services Agency (HSA) failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm.

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

FACTS AND PROCEDURAL HISTORY

Because the facts resulting in J.R.'s dependency are not relevant to the issues on appeal, we need not discuss them in detail. Father and J.R.'s mother, L.R.,[2] both have a history of drug abuse and mental illness. When J.R. was born in August 2011, mother tested positive for methamphetamine. On August 15, 2011, HSA filed a section 300 petition alleging failure to protect. The petition also alleged that mother's parental rights had been terminated as to J.R.'s older half-sibling due to mother's drug abuse.

Prior to the detention hearing, an HSA social worker asked mother and father whether they had any Indian ancestry. Father stated that his family has Apache heritage and were "trying to get" a "BIA [Bureau of Indian Affairs] number." Mother stated that her family is of Cherokee descent. M.M., the minor's maternal great aunt, attended the detention hearing but did not provide any additional information at that time regarding the family's possible Indian ancestry. At the hearing, mother and father each completed form ICWA-020 (Parental Notification of Indian Status). Father indicated that he may have Apache ancestry, while mother identified her possible Cherokee heritage. After reviewing the forms the court stated that "[HSA] will need to investigate further."

On September 26, 2011, HSA mailed form ICWA-030 (Notice of Child Custody Proceeding For Indian Child) to the Apache and Cherokee tribes. The notices were defective in several respects. The father's place of birth was not included, and HSA merely provided the names of the maternal grandmother and maternal great-grandmother. In the space provided for the paternal grandmother, HSA gave the name and referred to an unknown address in Klamath Falls, Oregon, and a birth place of Superior, Arizona. The notice also erroneously identifies the minor's maternal great-grandfather as a maternal great-grandmother. In the spaces provided for the minor's other relatives, the notice simply states "No Indian Ancestry Known or Reported." No other information regarding the minor's relatives was provided. The notice also gave an incorrect date for

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[2] L.R. is not a party to this appeal.

the jurisdiction and disposition hearing and was mailed only three days prior to the hearing, which rendered the notice untimely. (25 U.S.C. § 1912(a); *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408.)

HSA filed the notice along with the return receipts from the tribes and the BIA. As of the hearing date on December 5, 2011, the BIA and all but two of the noticed tribes had sent responses indicating that the minor was neither a member nor eligible for membership. The other two tribes had not responded. The court found that the notices were sufficient and that the ICWA did not apply.

After parental rights were terminated and father filed his opening brief, HSA asked the court to reappoint counsel and hold further proceedings to determine whether the ICWA applied. The court granted the request. HSA subsequently re-interviewed father and members of father's and mother's families regarding their possible Indian heritage. Attempts to locate mother were unsuccessful. HSA was also unable to locate the paternal grandmother or a paternal cousin who purportedly lived in Klamath Falls, Oregon. Each of the individuals interviewed conveyed any information they had regarding the minor's possible Indian ancestry, and that information was included in a revised ICWA-030 that was sent to the tribes on April 20, 2012. K.R., a paternal relative who had already been interviewed, subsequently indicated that the revised notice had mistakenly identified the name of the paternal great-great-grandmother. HSA thereafter sent a second revised notice to the tribes. The revised notice includes additional information such as father's place of birth; mother and father's former address; the name of the maternal grandfather; the paternal grandfather's name, address, date and place of birth, and claimed tribal affiliation; and the names, dates of birth, and claimed tribal affiliations of the paternal great-grandmother, paternal great-grandfather, and paternal great-great-grandmother.

HSA thereafter filed the receipts indicating that the revised notices had been received by the BIA and all the federally recognized Cherokee and Apache tribes. As of the hearing on May 21, 2012, only the BIA and three of the noticed tribes had sent responses indicating that the minor was neither a member nor eligible for membership.

At a continued hearing on June 28, 2012, all but three of the tribes had responded indicating that the minor was not a member or eligible for membership. The court found that ICWA notice had been properly given, but continued the matter to give the three remaining tribes additional time to respond. At the continued hearing on July 9, 2012, HSA submitted the response of one of the remaining tribes indicating that the minor was not a member or eligible for membership. Because the two remaining tribes had not responded within 60 days after receiving the revised notices, the court determined that the ICWA did not apply. (§ 224.3, subd. (e)(3); Cal. Rules of Court, rule 5.482(d)(1).)

DISCUSSION

Father has filed an opening brief contending that the first notices sent to the BIA and the federally recognized Cherokee and Apache tribes were insufficient to comply with the ICWA. Implicitly acknowledging as much, HSA subsequently sought to remedy the error by conducting a further investigation of mother and father's claims of possible Indian heritage and sending revised notices to the potentially affected tribes. HSA moved to augment the record on appeal to include these proceedings and filed a brief explaining how the revised notices are sufficient. Father did not oppose the motion to augment, nor did he file a reply brief challenging HSA's claims or the sufficiency of the revised notices, which serve to correct the deficiencies alleged in the opening brief. Under the circumstances, father has effectively conceded the point. Moreover, the augmented record amply supports the court's conclusions that the HSA gave sufficient notice and that the ICWA does not apply.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. § 1901 et seq.) "The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource. [Citation.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) The juvenile court and social services agencies have a duty to inquire at the outset of the proceedings whether a child subject thereto is, or may be, an Indian child. (*Id.* at p. 470.)

The duty to provide notice under the ICWA arises when "the court knows or has reason to know that an Indian child is involved . . . ." (25 U.S.C. § 1912(a).) An "Indian child" is one who is either a "member of an Indian tribe or . . . eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (*Id*. at § 1903(4).) The notices "must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) "It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*Ibid.*; *In re C.D.* (2003) 110 Cal.App.4th 214, 224–225.)

We review compliance with the ICWA under the harmless error standard. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402–403.) Notice is sufficient if there was substantial compliance with the applicable provisions of the ICWA. (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 566.)

Father's claim is premised on the fact that the original notice did not include his place of birth and only contained scant information regarding the minor's other relatives. The revised notices, however, do include father's place of birth and offer much more identifying information about the minor's ancestors. The augmented record also reflects that HSA conducted a thorough investigation regarding the minor's possible Indian heritage and included all available information relevant to that determination in the revised notices that were sent to the BIA and the potentially affected tribes. Indeed, father does not argue otherwise. Moreover, the BIA and the tribes either directly responded that the minor was not a member or eligible for membership, or did so by operation of law by declining to respond within 60 days of receiving the revised notices.

Accordingly, the court correctly found that the revised notices were sufficient and that the ICWA did not apply.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

Lee Gulliver, under appointment by the Court of Appeal, for Defendant and Appellant.

Leroy Smith, County Counsel, Oliver G. Hess, Assistant County Counsel, for Plaintiff and Respondent.