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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.P. et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B277866 (Super. Ct. Nos. J069928, J069929) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. WILLIAM P. et al., Defendant and Appellant.	

William P. (Father) and R.G. (Mother) appeal orders of the juvenile court declaring that their minor children J.P. and S.P. are adoptable and terminating their parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1).)[1] We affirm.

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

FACTUAL AND PROCEDURAL HISTORY

On March 12, 2014, law enforcement officers responded to a domestic violence complaint in the home of Father and Mother. J.P., four years old, and S.P., two years old, had witnessed Father choking Mother. Father and Mother have long histories of methamphetamine and marijuana abuse. The officers found methamphetamine and drug paraphernalia in the home, and subsequently, arrested Father.

On March 19, 2014, the Ventura County Human Services Agency (HSA) filed a dependency petition regarding J.P. and S.P. HSA alleged that Father and Mother have a history of substance abuse and domestic violence, and that Father had committed physical violence against Mother. (§ 300, subds. (b) [failure to protect], (g) [failure to support].)

The juvenile court detained the children and placed their custody and care with HSA. The court later sustained the allegations of the dependency petition pursuant to section 300, subdivisions (b) and (g), and ordered family reunification services. The children initially were placed with their paternal grandmother, and later with their paternal aunt who lives with the grandmother.

During the dependency proceedings, Father informed HSA that his mother may have Cherokee Indian heritage. Subsequently, HSA prepared notices on Judicial Council Form ICWA-030 ("Notice of Child Custody Proceedings for Indian Child"). The notices contained information about Father and Mother, the paternal grandmother, and one set of paternal great-grandparents, and were mailed to the Cherokee tribes. Each tribe responded that, based upon the information provided, no evidence supported a finding that J.P. and S.P. were eligible for

tribal enrollment and that the tribe therefore lacked legal standing to intervene. The juvenile court found that notices pursuant to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1912(a)) had been given and that ICWA did not apply.

Father and Mother commenced family reunification services and, in early 2015, received a 60-day visit with their children. At the 12-month review hearing, HSA recommended that Father and Mother receive custody of the children with the provision of family maintenance services. On April 13, 2015, the juvenile court ordered the return of custody to Father and Mother, with family maintenance services.

Within six months, however, family reunification collapsed. Father and Mother missed drug tests or refused to test, and ceased attending 12-Step meetings. Father and Mother also missed or canceled treatment services for their children. In addition, Mother disappeared for three days without contact. HSA then filed supplemental dependency petitions on behalf of the children.

The juvenile court issued a removal warrant for the children at HSA's request. HSA then placed the children with their paternal aunt who now seeks to adopt them. At the 18-month review hearing, the court sustained the allegations of the supplemental petition, terminated family reunification services, and set the matter for a permanent plan hearing.

On September 7 and 9, 2016, the juvenile court held a contested permanent plan hearing. The court received evidence of HSA reports and memorandums and took judicial notice of the dependency petitions. It also received testimony from Doctor Robert Beilin, the HSA social worker, Father, and Mother.

Doctor Beilin testified that he met with Mother, Father, and the children on August 20, 2016, for approximately one hour. He opined that S.P.'s attachment to Mother was "something between an anxious attachment and . . . a secure attachment." Beilin also confirmed that disrupting a secure attachment presents possible adverse and lifelong consequences for a child.

The parents' attorneys argued that the beneficial parental relationship to adoption applied and that parental rights should not be terminated. The children's attorney disagreed and asserted that the exception did not apply. Following argument by the parties, the court found by clear and convincing evidence that the children were adoptable and that the exception did not apply. It then terminated parental rights.

Father appeals and contends that ICWA notices to the Cherokee tribes were inadequate.

Mother also appeals and contends that the juvenile court erred by not applying the beneficial parental relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).) Mother also joins the arguments of Father to the extent the arguments are relevant and beneficial to her. (Cal. Rules of Court, rule 8.200(a).)

DISCUSSION

I.

Father argues that the ICWA notices contained insufficient and incomplete information regarding his relatives with Cherokee Indian ancestry. He contends that the parental rights termination order should be reversed and the matter remanded to ensure compliance with ICWA.

ICWA notice requirements are strictly construed and must provide sufficient information to allow sufficient review of tribal records. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 56.) The notices must include, among other things, the maiden and married names of the child's biological parents, grandparents, and great-grandparents, as well as current and former addresses, birthdates, place of birth and death, tribal enrollment numbers, and any other identifying information. (25 U.S.C. § 1912(a); § 224.2, subd. (a)(5)(C).)

The juvenile court determines whether proper notice was given under ICWA and whether ICWA applies to the proceedings. (*In re Charlotte V.*, *supra*, 6 Cal.App.5th 51, 57.) We review the court's findings for substantial evidence. (*Ibid.*) Deficiencies or errors in an ICWA notice are subject to review for harmless error. (*Ibid.*)

The ICWA notices sent to the Cherokee Indian tribes were sufficient because the notices contained information regarding all relatives that Father claimed to have Indian ancestry. The notices list the names of Father's parents, including his mother's maiden and married names, date and place of birth, and current address. The notice also stated the names, birthplaces, birthdates, and dates of death of the paternal grandmother's father and mother. The paternal grandmother's maiden name, S., is the same name as her father's surname. It is also a reasonable inference from the notice that the name stated just above great-grandfather S. is his wife, M.L.S.D.

The asserted failure of HSA to elicit information regarding other relatives or Father's paternal ancestry is harmless because Father claimed Cherokee Indian heritage through his mother. (*In re Charlotte V.*, *supra*, 6 Cal.App.5th 51,

58 [lack of notice concerning maternal grandfather was "irrelevant" because there was no indication the maternal grandfather had any Indian ancestry].)

If Father had raised this issue in the juvenile court, HSA could have introduced additional evidence to show that it had performed an adequate inquiry. Father did not raise the issue below and now HSA lacks that opportunity. "At this point, [Father] must take the record as [he] finds it." (*In re Charlotte V.*, *supra*, 6 Cal.App.5th 51, 58.) HSA has substantially complied with ICWA requirements and Father has not demonstrated prejudicial error.

II.

Mother asserts that the "beneficial parental relationship" exception to adoption precludes termination of her parental rights. (§ 366.26, subd. (c)(1)(B)(i).) She points out that she consistently visited with the children, the visits were loving, and the children were happy to see her. Mother asserts that she has been involved with the children for most of their lives, the children loved her, she was attentive and nurturing toward them during visits, and Doctor Beilin opined that a child could have a secure attachment to both a parent and a caregiver (guardian). (*In re S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a primary attachment to parent to establish beneficial parental relationship exception to adoption].)

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. (*In re Grace P.* (2017) 8

Cal.App.5th 605, 612.) The "beneficial parental relationship" exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].) Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship exists where children in mother's care the majority of their lives].) "The application of the beneficial parent relationship exception requires a robust individualized inquiry

given that '[p]arent-child relationships do not necessarily conform to a particular pattern,' and no single factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive." (*Grace P.*, at p. 613.)

Mother did not meet her evidentiary burden to establish that her relationship with her children was sufficiently compelling to outweigh the legal preference for adoption. Although Mother and her children enjoyed loving visits, the adoptive home with their aunt would provide them with permanence and stability. The children had been removed twice from Mother and Father for reasons of the parents' drug use or domestic violence. The children had lived with either their paternal grandparents or their aunt for a significant portion of their lives. As the juvenile court judge stated, "There's no question that these parents have filled the parental role at times for these children, although they didn't do a very good job in many of those times." Although Mother and Father initially complied with family reunification services, in late 2015, they missed drug tests and psychological treatment programs for the children. Mother also disappeared from the family for three days without contact. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].)

Doctor Beilin opined that Mother's relationship with S.P. fell between an anxious and a secure attachment. He also opined that he did not have sufficient information to predict the effect on S.P. of severing parental rights. The juvenile court expressly considered and weighed this expert testimony. Sufficient evidence supports the decision of the juvenile court

that the beneficial parental relationship exception to adoption does not apply.

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel, for Plaintiff and Respondent.