Filed 12/23/19 In re Daisy F. 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| In re DAISY F., a Person Coming Under the Juvenile Court Law. | B297384 |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>LISETTE V.,<br><br>Defendant and Appellant. | (Los Angeles County (Super. Ct. No. 17CCJP01646A) |

APPEAL from orders of the Superior Court of Los Angeles County, Jana M. Seng, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Erica Edelman-Benadon, Senior Deputy County Counsel for Plaintiff and Respondent.

## INTRODUCTION

Lisette V. appeals from the juvenile court's jurisdiction findings and disposition orders declaring her two-year-old child, Daisy F., a dependent of the juvenile court. Her sole argument is the court erred in failing to make a "final ruling" on whether the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA) applied "regarding Lisette." The juvenile court, however, found that it had no reason to know Daisy was an Indian child and that ICWA did not apply, findings Lisette does not challenge. Therefore, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Original Petition and Detention*

In July 2017 Lisette left Daisy in the care of "Mona," a woman whom Lisette had never met, because Lisette was homeless and wanted to get Daisy "out of the street." During a visit, Lisette noticed Daisy had "a busted lip and a bite mark." Lisette continued to leave Daisy in Mona's care even though Lisette suspected "something was happening to [Daisy]." In November 2017 Mona's son found Daisy unconscious in the bathroom. Lisette took Daisy to the hospital, where a social worker from the Los Angeles County Department of Children and Family Services interviewed Lisette. As part of the investigation into possible child abuse, the social worker asked Lisette if she had any Native American ancestry. Lisette "denied any Native American Ancestry for herself."

In November 2017 the Department filed a petition to declare Daisy a dependent of the juvenile court under Welfare

and Institutions Code section 300, subdivisions (a), (b), (g), and (j).[1] The petition included a form titled "Indian Child Inquiry Attachment" (Judicial Council Forms, form ICWA-010(A)) indicating that the social worker had made an "Indian child inquiry" and that Daisy had "no known Indian ancestry."

For the detention hearing, the court received, among other documents, a parentage questionnaire indicating Jaime F. was Daisy's father and a form titled "Parental Notification of Indian Status" (Judicial Council Forms, form ICWA-020) (form ICWA-020), on which Lisette marked a box stating, "I have no Indian ancestry as far as I know." During the hearing, the court asked Lisette: "You indicate that you have no Native American heritage. Is that correct?" Lisette responded, "That is correct." The minute order for the detention hearing states: "The Court does not have a reason to know that ICWA applies as to Mother." The minute order also states the court ordered the Department to investigate whether Jaime had any Indian ancestry. Lisette denied the allegations, and the court detained Daisy.

B. *First Amended Petition and Interim Review Report*

Further medical evaluation revealed the extent of Daisy's condition and injuries, including reoccurring, nonaccidental traumatic head injuries and blindness caused by physical trauma. The Department filed a first amended petition under section 300, subdivision (e), and added allegations against Jaime. The court continued the jurisdiction hearing for several months. During that time the Department submitted a report stating a

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

social worker interviewed Lisette and she again "denied any Native American heritage."

### C. *Second Amended Petition, Jurisdiction, and Disposition*

In August 2018 the juvenile court sustained a second amended petition as to Lisette and learned Jaime was incarcerated. The court set a hearing for an "adjudication for bifurcated counts" regarding Jaime and a disposition hearing for Lisette.

At the hearing in December 2018 the court received, among other documents, Jaime's form ICWA-020 on which he marked a box stating, "I have no Indian ancestry as far as I know." The court stated: "[Jaime] has also provided an Indian Child Welfare Statement indicating he has no American Indian heritage. Court can make the ultimate finding as to [Daisy], that the Indian Child Welfare Act does not apply, has no reason to believe that it would apply." The court's minute order for that hearing states: "The Court does not have a reason to know that this is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs]. Parents are to keep the Department, their Attorney and the Court aware of any new information relating to possible ICWA status. ICWA-020, the Parental Notification of Indian Status is signed and filed." The court continued the jurisdiction and disposition hearing.

In February 2019 the court sustained the allegations against Jaime and ordered family reunification services for him. Lisette was not present for disposition, and the court denied her family reunification services under section 361.5, subdivision (b)(5). Lisette timely appealed.

## DISCUSSION

"As the California Supreme Court explained in [*In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8], notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. [Citation.] Notice to the parent or Indian custodian and the Indian child's tribe is required by ICWA in state court proceedings seeking foster care placement or termination of parental rights 'where the court knows or has reason to know that an Indian child is involved.' [Citation.] 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. [Citations.] [¶] [A]lthough 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.' [Citations.] [¶] In addition, new federal regulations to implement ICWA 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.'" (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784-785, fns. omitted.)

Under section 224.2, subdivision (a), juvenile courts and child protective agencies have an "affirmative and continuing duty" to inquire whether a child may be an Indian child. (*In re Isaiah W., supra*, 1 Cal.5th at p. 9; see *In re N.G.* (2018) 27 Cal.App.5th 474, 481.) In particular, section 224.2, subdivision (c), states: "At the first appearance in court of each party, the court shall ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child." (See *In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 785 [the juvenile court must have each parent complete form ICWA-020 "at his or her first appearance in the dependency proceeding" because the form may be the first disclosure indicating "the child involved in the proceeding is or may be an Indian child"].) Having parents complete form ICWA-020 and answer questions regarding their possible Indian ancestry assists the child protective agency in investigating, and the juvenile court in determining, whether there is reason to know the child is an Indian child and, ultimately, whether ICWA applies to the case. (See *In re S.B.* (2005) 130 Cal.App.4th 1148, 1160 ["a parent has superior access" to information that may suggest a child may be an Indian child].)

Lisette does not argue that the Department or the juvenile court failed to comply with ICWA inquiry and notice requirements, that she (or Jaime) has any possible Indian ancestry, or that the juvenile court erred in finding ICWA does not apply to this case. Lisette argues only that the court erred in

failing to make a "final ruling" on whether ICWA applies to the case "regarding" her.

Neither ICWA nor California law requires the court to make a specific finding whether ICWA applies to or "regarding" a particular parent. While a finding that a parent may have Indian ancestry may provide a reason to know the child may be an Indian child, and trigger a duty of further inquiry into the possible Indian ancestry of the child, neither ICWA nor California law requires the court make a finding whether ICWA applies to *a parent* (or any other relative of the child). The law requires the court to make findings regarding *the child*. (See *In re Isaiah W.*, *supra*, 1 Cal.5th at p. 6 ["ICWA imposes on the juvenile court a continuing duty to inquire whether the *child* is an Indian child," italics added]; *In re J.L.* (2017) 10 Cal.App.5th 913, 918 [juvenile court has a "'continuing duty to inquire whether [a *child* is] an Indian child in all dependency proceedings,'" italics added].) And the trial court made that very finding regarding Daisy. (See § 224.2, subd. (i)(2) [if the juvenile court finds "there is no reason to know whether the child is an Indian child, the court may make a finding that [ICWA] does not apply to the proceedings"].)

After multiple inquiries by the Department and the juvenile court, the court found there was no reason to know Daisy was an Indian child. As stated, Lisette does not challenge that finding, and for good reason. When a Department social worker asked Lisette at the hospital if she had any Native American ancestry, Lisette said she did not. Lisette filed form ICWA-020 expressly declaring, "I have no Indian ancestry as far as I know." The court asked Lisette whether she had any Indian ancestry, and Lisette denied any. Jaime also filed a written statement

denying any Indian ancestry. No one else having an interest in Daisy provided any information suggesting Daisy may be an Indian child. With this information, the court found that there was no reason to believe Daisy was an Indian child and that ICWA did not apply to the proceedings. And that was the only ICWA ruling the court had to make. There is no ICWA finding "regarding" a parent; there is only an ICWA finding.

## DISPOSITION

The juvenile court's jurisdiction findings and disposition orders are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.