Filed 4/18/12 In re K.N. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re K.N., Jr., a Person Coming Under the Juvenile Court Law.	B234688 (Los Angeles County Super. Ct. No. CK85986)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. H.M. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County. Anthony Trendacosta, Juvenile Court Referee. Affirmed but remanded to the juvenile court with directions.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant H.M.

Andre F.F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant K.N.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel and Keith Davis, Deputy County Counsel, for Plaintiff and Respondent.

H.M. (mother) and K.N. (father) appeal the jurisdictional and dispositional orders as to K.N., Jr. (minor). They contend that the Department of Children and Family Services (Department) failed to adequately inquire as to whether the minor is an Indian child for purposes of the Indian Child Welfare Act (ICWA). This argument has merit. But reversal is not required. Rather, we affirm the appealed orders with instructions to the juvenile court to direct the Department to make the further inquiries required by California Rules of Court, rule 5.481(a)(4).

FACTS

The ICWA inquiries; detention; jurisdiction and disposition; appeal

The Department filed a dependency petition on behalf of the minor.[1]

Mother filled out an "ICWA-020" form in which she checked a box labeled "I may have Indian ancestry." On a line labeled "Name of tribe(s)," she wrote "Blackfoot—Dpt[.] can contact child['s] MGM."

At the detention hearing, the juvenile court asked mother, "With respect to the Indian heritage[,] do you know whether you, your parents, or grandparents were registered members of any tribe or tribes?" Mother responded, "Not that I know of." The juvenile court then asked, "Do you know whether you, your parents, or grandparents ever received any services from an Indian tribe?" Mother answered, "Not that I'm aware of." Following up, the juvenile court asked, "Do you know whether you, your parents, or grandparents ever lived on an Indian reservation?" Mother answered, "No." In response, the juvenile court asked, "Is it a fair statement—and please correct me if I'm wrong—that the Indian heritage that you believe you may have is based upon family history, what you've been told by various family members?" Mother answered, "Yes."

The Court concluded, "Okay. Then under [section] 224 of the Welfare and Institutions Code and case law as I understand it, I don't believe that there's sufficient information for reason to know. I believe that it's too attenuated at this particular point.

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[1] The petition was also filed on behalf of the minor's sibling. That sibling is not a party to this appeal.

[¶] However, I am ordering the Department to further interview the mother, interview the maternal grandmother, and any other relatives who may have information[] to determine whether or not there's any sufficient information to trigger notice pursuant to the [ICWA] with any tribe or tribes or the Bureau, and to report that back at the earliest opportunity to the [the juvenile court] so the [juvenile court] can make whatever order [is] necessary to notice. And at the minimum[,] it should be included in the pretrial resolution conference report[,]—or excuse me[,]—the jurisdictional/disposition report. [¶] With respect to [father] he indicated no American Indian ancestry."

The minor was detained.

In its jurisdiction/disposition report, the Department stated that a social worker attempted to contact and interview the maternal grandmother but was not successful because she does not have a phone. At the jurisdiction/disposition hearing, the minor was declared a dependent.[2]

These timely appeals followed.

Subsequent ICWA inquiries; the ruling[3]

Mother told a social worker that her great-grandmother, F.L., was "affiliated by birth with the Black Foot tribe." The Department spoke to the maternal grandmother. She stated that she "was not certain of the intricate details of [F.L.'s] lineage and/or association with the Black Foot tribe" and that F.L. died in 1966. In a "Last Minute Information For The Court," the Department stated that it could not "gather any

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[2] According to mother and father, maternal grandmother was present at various hearings but was never interviewed by the Department or questioned by the juvenile court. We note that the reporter's transcript indicates that maternal grandmother was present at hearings in May 2011.

[3] On January 4, 2012, we granted the Department's motion to take additional evidence. The record now includes the reporter's transcript from November 10, 2011, the Department's Last Minute Information For The Court dated November 4, 2011, and the minute order dated November 10, 2011.

statement(s) regarding family lineage, specifically . . . alleged ties to the Black Foot tribe."

At the next hearing, the juvenile court stated: "As the [juvenile court] previously found, it does appear at this particular point that the relationship is too attenuated under case law and [section] 224 of the Welfare [and] Institutions Code to indicate Indian heritage." The juvenile court later added: "The minute order should reflect that it's based on the interview with the [maternal] grandmother, who had no information regarding Indian heritage, other than what's contained in [the] report."

DISCUSSION

We are asked to resolve a question of law based on undisputed facts. Our review is de novo. (*Hadian v. Schwartz* (1994) 8 Cal.4th 836, 842.)

ICWA was enacted to establish "minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." (25 U.S.C. § 1902.) Notice must be given to Indian authorities when "the court knows or has reason to know that an Indian child is involved." (25 U.S.C. § 1912(a).) In addition to ICWA's notice requirement, California has adopted an inquiry requirement with two relevant steps: (1) the Department "must ask the child, if the child is old enough, and the parents . . . whether the child is or may be an Indian child;" and (2) if the Department "knows or has reason to know that an Indian child is or may be involved, that person or entity must make further inquiry." (Cal. Rules of Court, rule 5.481(a)(1), (a)(4).) The further inquiry requirement is triggered when "a person having an interest in the child . . . informs or otherwise provides information suggesting that the child is an Indian child." (Cal. Rules of Court, rule 5.481(a)(5)(A).) A statement such as "'I think my grandfather has some Indian blood'" is enough to require further inquiry. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1200.)

Here, the further inquiry requirement was triggered because mother checked "I may have Indian ancestry" on the ICWA-20 form, provided "Blackfoot" as the tribe's name, suggested the Department contact the maternal grandmother for more information, and stated at the detention hearing that she may have Indian heritage based on family history. Thus, the Department had reason to know that an Indian child may be involved for purposes of California Rules of Court, rule 5.481(a)(4).

When the further inquiry requirement is triggered, the Department must: (1) interview the "parents . . . and 'extended family members;'" (2) "[c]ontact[] the Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes in which the child may be a member or eligible for membership;" and (3) "[c]ontact[] the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (Cal. Rules of Court, rule 5.481(a)(4)(A)–(C).)

The Department did not follow these standards. Even if we consider the interview of the maternal grandmother that occurred while this appeal was pending, there remains no evidence that the Department contacted the Bureau of Indian Affairs, the California Department of Social Services, any tribe or any extended family members to gather information regarding the minor's ancestry. Therefore, California's further inquiry requirement was not met. But we need not reverse. Rather, the appropriate remedy is to affirm and remand the matter back to the juvenile court for compliance with the law. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 384–385.)

DISPOSITION

The orders are affirmed. Upon remand, the juvenile court shall direct the Department to make the further inquiries required by California Rules of Court, rule 5.481(a)(4). Then, the juvenile court must consider any new evidence and determine whether ICWA requires notice. If it does, notice must be given. If it is later determined that the minor is an Indian child, mother and father can petition the juvenile court to invalidate any orders that violated title 25 United States Code sections 1911, 1912, and 1913. (See 25 U.S.C. § 1914.)

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ