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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re J.N, a Person Coming  
Under the Juvenile Court Law.

B298142  
(Los Angeles County  
Super. Ct.  
No. 19CCJP01925)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SABRINA K.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Mary E. Kelly, Judge. Conditionally affirmed and remanded with directions.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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Sabrina K. (Mother) appeals from the juvenile court's jurisdictional findings and dispositional order declaring then nine-year-old J.N. a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b)(1).<sup>1</sup> Mother's sole contention on appeal is that the Los Angeles County Department of Children and Family Services (the Department) and the juvenile court failed to comply with the inquiry and notice provisions of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA). Notwithstanding Mother's filing of a parental notification form stating J.N. may have Cherokee ancestry through the maternal great-grandmother, Mother's statement at the jurisdiction hearing that the great-grandmother was "probably more than likely" a registered member of the Cherokee tribe, and the presence at the hearing of multiple maternal relatives, neither the Department nor the juvenile court inquired of Mother or her relatives about J.N.'s Cherokee ancestry. Rather, the juvenile court concluded ICWA did not apply without any further inquiry.

The Department concedes there was no compliance with ICWA, and we agree. We are troubled by the flagrant violation of

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

ICWA by the Department and the juvenile court. We conditionally affirm the jurisdictional findings and dispositional order as to J.N. but remand with directions that the juvenile court direct the Department to comply with the inquiry and notice provisions of ICWA.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. The Petition and Detention*

In March 2019 the Department received a referral alleging J.N.'s legal guardian, Antoinette J., had physically abused J.N. J.N. had lived with Antoinette since he was 18 months old because Mother was incarcerated. On March 25, 2019 the Department filed a petition on behalf of J.N. pursuant to section 300, subdivisions (a) and (b)(1), alleging Antoinette had physically abused J.N. Mother was not present at the March 26 detention hearing. The Department's attorney raised with the court that the Department and the court had "to do ICWA with [the] legal guardian." The court responded, "We do have to do it?" The Department's attorney responded, "Yeah, because it's a family member." At the end of the hearing, the court detained J.N. and placed him in foster care. The court deferred consideration of ICWA.

### *B. The Jurisdiction and Disposition Report and Hearing*

The April 22, 2019 jurisdiction and disposition report stated ICWA "does not apply" based on Antoinette's statement to the social worker that the statute did not apply. Mother was not interviewed.

Although Mother was incarcerated, she was present at the May 7, 2019 jurisdiction and disposition hearing. J.N.'s maternal uncle Prentiss K., great-aunt Yvonne S., and cousin Tara P. were present in the courtroom. On the day of the hearing, Mother filed a parental notification of Indian status form (ICWA-020) stating J.N. may have Cherokee ancestry through the maternal great-grandmother. Antoinette entered a no contest plea to the allegation in the petition she physically abused J.N., and the court sustained the allegation under section 300, subdivision (b)(1), and struck the remaining counts.

The juvenile court then noted Mother indicated J.N. may have Cherokee ancestry through J.N.'s maternal great-grandmother. Mother stated it was "probably more than likely" the great-grandmother was a registered member of the tribe. The court did not make any further inquiry of Mother or J.N.'s relatives in the courtroom as to Indian ancestry, finding only "notice [was] proper for disposition." The court did not order the Department to perform a further investigation or provide any notice to the Cherokee tribe; neither did it make a finding as to whether ICWA applied. The court declared J.N. a dependent of the court and, over the objection of the Department and Mother, ordered him placed with Antoinette. The court ordered the Department to arrange telephonic contact with Mother and visitation at the prison.

Mother timely appealed.

## DISCUSSION

### A. *ICWA Inquiry and Notice Requirements*

ICWA provides as to dependency proceedings, “[W]here the court knows or has reason to know that an Indian child is involved, the party seeking . . . termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.” (25 U.S.C. § 1912(a); see *In re Isaiah W.* (2016) 1 Cal.5th 1, 5; *In re N.G.* (2018) 27 Cal.App.5th 474, 480; *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784 (*Elizabeth M.*).) California law similarly requires notice to the Indian tribe and the parent, legal guardian, or Indian custodian if the court or the Department “knows or has reason to know” the proceeding concerns an Indian child. (Welf. & Inst. Code, § 224.3, subd. (a); see *Elizabeth M.*, at p. 784; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649; Cal. Rules of Court, rule 5.481(b)(1) [notice 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,” including dependency cases filed under § 300].)

ICWA’s notice requirement is at the heart of ICWA because it “enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe receives the required notice.” (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 5; accord, *In re N.G.*, *supra*, 27 Cal.App.5th at p. 480; see 25 U.S.C. § 1912(a); Welf. & Inst. Code, § 224.3, subd. (d).)

Under ICWA, the Department has an obligation to investigate a child’s potential American Indian ancestry where it has information suggesting the child is a member of a tribe or eligible for membership in a tribe. As we explained in *Elizabeth M.*, “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.’” (*Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 784, fn. omitted, quoting § 224.3, former subd. (b)(1); accord, *In re E.H.* (2018) 26 Cal.App.5th 1058, 1068; see § 224.2, subd. (d).)

The duty to develop the information concerning whether the child is an Indian child rests with the court and the Department, not the parents or members of the parents’ family. (*Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 784; accord, *In re K.R.* (2018) 20 Cal.App.5th 701, 706 [“The court and the agency must act upon information received from any source, not just the parent [citations], and the parent’s failure to object in the juvenile court to deficiencies in the investigation or noticing does not preclude the parent from raising the issue for the first time on appeal . . . .”].)

B. *The Department and the Juvenile Court Failed To Comply with ICWA*

Both the Department and the juvenile court failed in their obligation to ensure compliance with ICWA. The Department initially determined in the jurisdiction and disposition report ICWA did not apply based on Antoinette's statement that J.N. did not have Indian ancestry. The Department did not interview Mother or perform any further investigation prior to the jurisdiction and disposition hearing. Despite Mother's filing of a parental notification of Indian status form stating J.N. may have Cherokee ancestry through his maternal great-grandmother, and Mother's statement at the hearing it was "probably more than likely" the great-grandmother was a registered member of the tribe, the juvenile court made no further inquiry of Mother or her multiple relatives who were present in the courtroom. Moreover, the court failed to make any findings as to ICWA or to order the Department to perform a further investigation, finding only "notice [was] proper for disposition."

Once the juvenile court and the Department had reason to believe J.N. could be an Indian child, the Department failed to make a "further inquiry as soon as practicable" by interviewing Mother and her family members. (Cal. Rules of Court, rule 5.481(a)(4); *In re K.R.*, *supra*, 20 Cal.App.5th at p. 709.) The juvenile court likewise failed to carry out its obligation to ensure ICWA compliance. (See 25 U.S.C. § 1912(a) ["No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary . . ."]; Welf. & Inst. Code, § 224.3, subd. (d) [same]; Cal. Rules of Court, rule 5.482(a)(1) [same]; *In re K.R.*, at p. 709 ["[O]nce there is sufficient

information to believe that the children might be Indian children within the meaning of ICWA and the California statutes, ‘responsibility for compliance’ with those statutes ‘falls squarely and affirmatively’ on *both* the social services agency and the court.”].)

As the Department concedes, the matter must be remanded for the Department to perform a full investigation of J.N.’s potential Cherokee ancestry, including interviewing maternal family members who might have information bearing on J.N.’s possible Indian ancestry. If the investigation produces additional information substantiating Mother’s assertion of Cherokee ancestry, the Department must provide notice to the identified Cherokee tribe, or if the specific tribe cannot be determined, to the Bureau of Indian Affairs and the Department of the Interior. The juvenile court shall then determine whether the ICWA inquiry and notice requirements have been satisfied and whether J.N. is an Indian child.

Although remand is appropriate for the Department to conduct an investigation under ICWA, the jurisdictional findings and dispositional order conditionally remain in effect. (See *Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 788 [conditionally affirming § 366.26 order and remanding for compliance with ICWA]; *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385 [affirming dispositional order, but remanding to juvenile court to comply with required notice under ICWA].) If the juvenile court determines J.N. is an Indian child, the juvenile court must conduct a new jurisdictional hearing on the petition, as well as all further proceedings, in compliance with ICWA and related California law. If the court determines J.N. is not an Indian



child, the court's jurisdictional findings and dispositional order will remain in effect.

### **DISPOSITION**

The jurisdictional findings and dispositional order as to J.N. are conditionally affirmed. The matter is remanded to the juvenile court for further proceedings consistent with this opinion with directions that the court shall order the Department to comply with the inquiry and notice provisions of ICWA and related California law.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.