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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.G. et al., Persons Coming Under the
Juvenile Court Law.

B259280
(Los Angeles County
Super. Ct. No. CK76799)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

APPEAL from the judgment and orders of the Superior Court of Los Angeles County, Stephen C. Marpet, Referee. Affirmed.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

C.R. is the mother of a five-year-old son, R.G., and infant daughter, X.G. The mother appeals from a September 17, 2014 judgment declaring the children juvenile court dependents pursuant to Welfare and Institutions Code section 360.¹ The mother contends the juvenile court erred in finding it had no reason to know the children were Indian children within the meaning of the Indian Child Welfare Act. (25 U.S.C. § 1901 et seq.; see § 224 et seq.) The mother also argues the juvenile court erroneously failed to require compliance with the duty to inquire whether the children are subject to the Indian Child Welfare Act. We respectfully disagree and affirm the orders under review.

II. FACTUAL AND PROCEDURAL HISTORY

R.G. was born to the mother and an alleged father, J. G. X.G. was born to the mother and the presumed father, A.G. R.G. was a juvenile court dependent in 2009 and 2010, due to the mother's substance abuse. When the juvenile court terminated jurisdiction in that case, it awarded the mother sole legal and physical custody of R.G. Later in 2010, an allegation of general neglect by the mother was substantiated. The parents entered into a relationship in 2013. By September 2013, they and C.R. began living in the home of X.G.'s paternal grandparents.

The children were detained by the Department of Children and Family Services (the department) on July 3, 2014 because X.G. was born with drugs in her system. According to the dependency petition, the parents were unable to provide adequate care for the children because of drug abuse. In addition, the dependency petition alleges X.G.'s father knew the mother abused drugs but failed to protect the youngster. On September 17, 2014, the juvenile court declared the children dependents of the court

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

based on sustained allegations under section 300, subdivision (b). Custody was taken from the parents, the department was ordered to provide reunification services and the parents were granted visitation.

III. FACTS RELATING TO THE INDIAN CHILD WELFARE ACT ISSUE

At the July 8, 2014 detention hearing, the juvenile court reviewed the mother's statement to the social worker, Kevin Su. According to the detention report, the mother made the following statement concerning possible coverage by the Indian Child Welfare Act to Mr. Su: "On [July 2, 2014, the] mother stated that her great-grandmother has Indian ancestry. [The m]other stated that she believed the name of the tribe was Cheyenne but has no information to whether her great-grandmother may have membership." The following occurred at the detention hearing: "THE COURT: . . . And you've indicated that you may have American Indian heritage in your family's background; is that correct? [¶] MINORS' MOTHER: Yes, Your Honor. [¶] THE COURT: And from whom? [¶] MINORS' MOTHER: My grandmother and my great grandmother. [¶] THE COURT: Your maternal -- [¶] MINORS' MOTHER: Paternal. My paternal -- [¶] THE COURT: So it's your -- [¶] MINORS' MOTHER: My father's mother. [¶] THE COURT: Your father's mother. [¶] MINORS' MOTHER: And her mother. Yes. [¶] THE COURT: Was your father's mother registered with a tribe? [¶] MINORS' MOTHER: No. I believe her mother was out of Chicago. [¶] THE COURT: And the tribe was Blackfoot? [¶] MINORS' MOTHER: Yes." The mother admitted that she was not registered with the tribe. And the mother admitted that she was ineligible to be registered because her father was not. The written Parental Notification of Indian Status form states that the maternal great-grandmother "is or may be a member of, or eligible for membership" in the Blackfoot tribe. The juvenile court indicated that it would secure the prior dependency file from 2009 and 2010 because there may be some more information in it. The juvenile court orally ruled in connection with the mother: "I'm going to find, at this time, it's not an [Indian Child Welfare Act] case, I have no

reason to know. [¶] If the department after further investigation thinks there is some American Indian they need to walk it on prior to the next -- prior to making any notices to any tribes.” After making this finding, the department’s attorney raised the question of whether the Indian status notification form had in fact been completed. The juvenile court verified that the form contained the name of the paternal great-grandmother, Anna H.

The juvenile court also reviewed the statement by the father of X.G. on the Parental Notification of Indian Status form. According to the father of X.G., a paternal great-grandfather may have Indian ancestry in the Cherokee tribe. But when questioned by the juvenile court, the father of X.G. claimed that the person with Indian heritage was a paternal great-great-grandmother. The father of X.G. could not recall her name and was unsure as to whether she was even registered with the tribe. When pressed by the juvenile court as to whether the paternal great-great-grandmother ever lived on a reservation, the father of X.G. stated: “I don’t recall. I just heard this from my uncle when he came to see the baby at the hospital and he let us know that, yeah, we have Cherokee in our family.” The juvenile court then clarified whether the father of X.G. had any other information. The father of X.G. answered, “No, your honor.” The juvenile court then ruled, “I’m also going to find that this is not an [Indian Child Welfare Act] case as to [the] father, I have no reason to know.”

The July 8, 2014 minute order for the detention hearing states: “The [c]ourt does not have a reason to know that this is an Indian Child, as defined under [the Indian Child Welfare Act], and does not order notice to any tribe or the [Bureau of Indian Affairs]. Parents are to keep the [d]epartment, their [a]ttorney[s] and the [c]ourt aware of any new information relating to possible [Indian Child Welfare Act] status. JV-020, the Parental Notification of Indian Status is signed and filed.”

The parents declined to be interviewed in August 2014. The mother gave an interview in September. The parents provided no additional details. R.G.’s father’s whereabouts were unknown. The paternal grandfather did not know where R.G.’s father could be found. In September, both R.G.’s paternal grandfather and X.G.’s paternal

grandmother spoke to Mr. Su. They related that the family had no American Indian ancestry. Further, the mother could provide no further information concerning tribal membership by the maternal great-great-grandmother. The social worker, Mr. Su, concluded in a memorandum prepared for the September 17, 2014 hearing, there was no reason to believe the Indian Child Welfare Act applies.

IV. DISCUSSION

The mother contends it was an abuse of discretion to find the Indian Child Welfare Act did not apply. This contention is meritless. Our Supreme Court has held: “[The Indian Child Welfare Act] is a federal law giving Indian tribes concurrent jurisdiction over state court child custody proceedings that involve Indian children living off of a reservation. [Citations.] Congress enacted [the Indian Child Welfare Act] to further the federal policy “that, where possible, an Indian child should remain in the Indian community” [Citation.]” (*In re W.B.* (2012) 55 Cal.4th 30, 48 [fn. omitted.]; *In re D.N.* (2013) 218 Cal.App.4th 1246, 1250-1251.) Our Supreme Court has explained: “[I]f the court knows or has reason to know that an “Indian child” is involved in a “child custody proceeding,” as those terms are defined in the Act [citation], the social services agency must send notice to the child’s parent, Indian custodian, and tribe by registered mail, with return receipt requested. [Citation.] . . . No hearing on foster care placement or termination of parental rights may be held until at least 10 days after the tribe or [Bureau of Indian Affairs] has received notice.” (*In re W.B.*, *supra*, 55 Cal.4th at p. 48; *In re D.N.*, *supra*, 218 Cal.App.4th at p. 1251; see § 224.2, subds. (a)(3) & (a)(4) [state law provision].) Under the Indian Child Welfare Act, the term “Indian child” is defined as follows, ““Indian child’ means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. §1903, subd. (4); *In re W.B.*, *supra*, 55 Cal.4th at p. 49.)

However, there is not a duty in all cases to conduct a review beyond that

performed here. Our Supreme Court has held: “[A] child’s Indian status cannot be finally confirmed without input from the tribes. [Citations.] But this fact does not expand ICWA’s duty of notice to all cases. Contact with the [Bureau of Indian Affairs] and tribes is required only if information produced by the initial inquiry gives the court, social worker, or probation officer reason to know the minor is an Indian child. . . . Section 224.3 imposes a duty to inquire about possible Indian status; it does not obligate the court to confirm that status with the [Bureau of Indian Affairs] and tribes in every juvenile court case.” (*In re W.B.*, *supra*, 55 Cal.4th at p. 55, fn. 14; see 10 Witkin, Summary of Cal. Law (2014 supp.) Parent and Child, § 528, pp. 280-281.)

No abuse of discretion occurred. The mother gave inconsistent versions concerning possible Native American heritage. The mother originally claimed she might have might have Cheyenne ancestry. But the mother then changed her statement to indicate any Indian background in the family would be in the Blackfoot tribe, through her father. She admitted she was not a tribal member and neither was her father. The mother further admitted that the paternal great-grandmother was not an Indian tribe member. None of the children are members of a tribe. Further, X.G.’s father provided only vague information as to potential Indian ancestry. As noted, the department further investigated the issue for the September 17, 2014 hearing. A discussion with R.G.’s paternal grandparents revealed there was no Native American ancestry. And X.G.’s paternal grandmother spoke to Mr. Su and explained there was no Native American in the family. And the mother was unable to provide any details concerning potential Native American ancestry in the family. Further, the juvenile court indicated it would look at the file in the prior dependency proceeding involving C.R. It is presumed the juvenile court did so. (Evid. Code, § 664; *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 715; *In re S.B.* (2009) 174 Cal.App.4th 808, 812; *Moyer v. State Bd. of Equalization* (1956) 140 Cal.App.2d 651, 655.)

Concerning the duty to inquire, the social worker, Mr. Su, interviewed the parents about possible Indian heritage. Further, the juvenile court questioned the parents at length to elicit whatever details they could provide. Upon being ordered by the juvenile

court to continue the investigation, the department interviewed two of the children's grandparents in September 2014 about possible Indian ancestry. Further, Mr. Su tried, without success, to interview X.G.'s father and R.G.'s father. Mr. Su spoke again with the mother, but she provided no additional details. The results of the subsequent investigation revealed there was no Indian ancestry. The department complied with its obligations imposed by law and as ordered by the juvenile court to make further inquiries after the detention hearing concerning potential Native American ancestry. No abuse of discretion occurred in connection with any Indian Child Welfare Act issue or any provision of state law.

V. DISPOSITION

The judgment and orders are affirmed.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.