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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re A.E., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B234679
(Super. Ct. No. J1379358)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

CARRIE P.,

Defendant and Appellant.

Carrie P. (mother) appeals the juvenile court's order terminating parental rights and selecting adoption as the permanent plan for her minor daughter A.E. (Welf. & Inst. Code,¹ § 366.26 et seq.) Mother contends that respondent Santa Barbara County Child Welfare Services (CWS) failed to comply with the notification requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm.

¹ Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

FACTS AND PROCEDURAL HISTORY

Mother, who was released from her second prison term approximately three months before A.E. was born, has a long history of drug and alcohol abuse. A.E. was born in May 2010, and tested positive for amphetamine. Mother tested positive for amphetamine and opiates. On June 8, 2010, CWS filed a section 300 petition alleging risk of abuse or neglect. At the request of CWS, A.E. remained in mother's custody while mother participated in a residential treatment program.

At her initial appearance, mother signed the ICWA-020 form indicating that she was not aware of any Indian heritage. When father first appeared at an interim hearing on August 23, 2010, he filled out the ICWA-020 form stating that he had "Mescalero Apache" heritage.² Rosemary L., the paternal grandmother, appeared at the same hearing and stated that (1) her father Daniel L. (the paternal great-grandfather) had Mescalero Apache heritage; and (2) Daniel L.'s mother, Maria M. (the paternal great-great-grandmother) was a registered tribal member. Rosemary L. further stated that her mother (the paternal great-grandmother) has Yaqui Indian heritage from a tribe near the Texas-Mexico border.

CWS conducted an inquiry based on the provided information. On September 9, 2010, CWS sent a completed ICWA-030 form on A.E.'s behalf to the Bureau of Indian Affairs (BIA), the Mescalero Apache tribe, and the Pascua Yaqui tribe.³ Attached to the form was a family tree that included information on A.E.'s possible Indian heritage as far back as her paternal great-great-great-grandparents, as well as all available information on her paternal great-great-grandmother's siblings.

Return receipts signed by the tribes were filed on September 24, 2010. The BIA responded that no further action was required and that appropriate notice had been

² Father was initially the alleged father, but was declared the biological father after a DNA test established his paternity. He is not a party to this appeal.

³ The notice was also sent to the Navajo tribes due to the fact that the family of A.E.'s half-sibling, who was also a dependent, had initially claimed Navajo heritage.

provided to the tribes. The Mescalero Apache and Pascua Yaqui tribes responded that A.E. was not an Indian child and that they did not intend to intervene in the proceedings.

Six days after mother left her residential treatment program, she used methamphetamine and drove under the influence thereof while A.E. was in the car. On November 18, 2010, A.E. was detained and a section 387 petition was filed requesting the child's removal. At the hearing on the section 387 petition, the court found that the ICWA did not apply. A.E. was subsequently removed following a contested jurisdiction/disposition hearing. Mother's parental rights were terminated on July 21, 2011. She timely appealed.

DISCUSSION

Mother contends the order terminating parental rights must be reversed because the juvenile court erred in determining the ICWA did not apply. We disagree.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. § 1901 et seq.) "The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource. [Citation.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) The juvenile court and social services agencies have a duty to inquire at the outset of the proceedings whether a child subject thereto is, or may be, an Indian child. (*Id.* at p. 470.)

The duty to provide notice under the ICWA arises when "the court knows or has reason to know that an Indian child is involved" (25 U.S.C. § 1912(a).) An "Indian child" is one who is either a "member of an Indian tribe or . . . eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (*Id.* at § 1903(4).) The notices "must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birthdate; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency

petition. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) "It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*Ibid.*; *In re C.D.* (2003) 110 Cal.App.4th 214, 224-225.)

We review compliance with the ICWA under the harmless error standard. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402-403.) Notice is sufficient if there was substantial compliance with the applicable provisions of the ICWA. (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 566.)

Mother asserts that the notice sent to the Mescalero Apache Tribe was defective because the name of A.E.'s paternal great-great-grandmother, Maria M., was not included. She adds that "[e]ven if the court were to find that the paper containing the family tree and naming Maria [M.] was sufficient notice, it is clear from the tribe's response[] that they followed the form and not the attachment, because only the names on the form were searched and Maria [M.] was not included." Mother is incorrect.

Maria M.'s name was not included on the ICWA-030 form because the form does not contain spaces for a minor's great-great-grandparents. Indeed, mother overlooks the fact that the ICWA does not require the notice to include such information. (§ 224.2, subd. (a)(5)(C).) Because CWS did not have to provide any information regarding A.E.'s great-great-grandparents, mother's claim that the notice was deficient in that regard necessary fails.

In any event, Maria M.'s name and the dates and places of her birth and death were included in a detailed family tree that was attached to the form and incorporated by reference in the section provided for additional relative information. This is plainly sufficient to notify the tribe of the known ancestors through whom A.E. might be eligible for membership.

Moreover, the tribe's response provides no further support for mother's inference that the notice was insufficient. The letter states in pertinent part: "According to our records, Carlos E[.], Rose L[.], [and] Daniel L[.], Sr. are not members of the Mescalero Apache Tribe. Therefore, [A.E.] do[es] not meet the necessary requirements

needed to become eligible for enrollment or recognized as a member of the Mescalero Apache Tribe." Contrary to mother's claim, this does not mean the tribe "followed the form and not the attachment." Instead, the statement simply reflects the tribe's eligibility requirements for membership, i.e., that a minor is not eligible for enrollment or recognition unless one of her parents or grandparents are already members. Each Indian tribe has sole authority to determine its own membership criteria. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 255.)

Mother also asserts, without any citation to the record, that the notice omitted pertinent and available information "for the paternal grandmother and paternal great-grandmother." The notice includes names and dates of birth for both women, as well as the paternal grandmother's current city of residence. The notice also identifies the city in which the paternal great-grandmother formerly resided and the date and place of her death. To the extent mother claims the notice should have included more specific information regarding current and former addresses, she fails to explain how including this information might have led the tribes to issue a different response. "[T]echnical compliance with the [ICWA's] notice requirements may not be required where there has been substantial compliance." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1531.) "The purpose of the ICWA notice provisions is to enable the tribe or the [Bureau of Indian Affairs] to investigate and determine whether the child is in fact an Indian child. [Citation.] Notice given under ICWA must therefore contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership." (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.) The information provided was sufficient for the tribes to make such a determination. Accordingly, any alleged deficiency in omitting more specific information about the paternal grandmother and paternal great-grandmother was harmless. (*In re E.W., supra*, 170 Cal.App.4th at pp. 402–403; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.)

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.*

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Pamela Rae Tripp, under appointment by the Court of Appeal, for
Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy County
Counsel, for Respondent.