Filed 11/8/19 In re A.J. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.J., a Person Coming Under the Juvenile Court Law.	B295692 (Los Angeles County Super. Ct. No. DK22425A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Craig S. Barnes, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant K.H. (mother) challenges the juvenile court's order terminating her parental rights to her two-year-old daughter A.J. (daughter). Mother argues the juvenile court erred when, despite mother's consistent and positive visits with daughter, the court held the beneficial parental relationship exception to adoption did not apply. Mother also argues the juvenile court erred in finding the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) did not apply. As discussed below, we conclude the juvenile court did not err in terminating parental rights. However, although we agree the trial court erred with respect to the ICWA, we conclude it was harmless error. Accordingly, we affirm.

BACKGROUND

1. The Family

Daughter is mother's youngest child. Mother also has a nine-year-old son, a six-year-old daughter, and a five-year-old daughter. Although mother's three older children are not involved in the instant proceedings, they are the subjects of a separate dependency proceeding in San Bernardino Superior Court (San Bernardino case), which is summarized below. Daughter's father A.J. (father) is not the father of mother's three older children. Mother and father had met less than a year before these proceedings began. Mother was in the process of

divorcing the father of her older children when these proceedings began.

Mother has a criminal history involving predominantly drug-related arrests. Father also has a criminal history involving largely drug-related arrests, as well as a conviction for felony domestic abuse.

2. Pending and Previous Dependency Cases

a. *San Bernardino Case*

When the instant proceedings began, the San Bernardino case had been pending for one year. In that case, mother's three older children had been declared dependents of the court due to allegations of neglect, mother's physical abuse of one of the children, and mother's and the older children's father's substance abuse. The children were placed with their maternal grandparents and for a while mother's whereabouts were unknown. During the course of the San Bernardino case, mother failed to comply with her case plan and court orders.

Upon learning of daughter's birth, a social worker involved with the San Bernardino case contacted a Los Angeles County Department of Children and Family Services (Department) social worker working on the instant case. The San Bernardino social worker reported mother's visits with her older children had been suspended because mother and father threatened to kidnap the three older children if "court did not go in mother's favor." The older children's caregiver and the children were being followed and mother and father made threats against both the caregiver and the San Bernardino social worker. The San Bernardino social worker also reported mother had not complied with her court-ordered San Bernardino case plan and had been "re-referred several times to her services and has not completed

them." The San Bernardino social worker also stated that in the fall of 2016 mother's family members told the social worker mother was pregnant with daughter, and mother confirmed her pregnancy to the social worker, who advised mother to seek prenatal care.

When daughter was one month old, the Department social worker contacted the San Bernardino social worker, who reported mother continued to be non-compliant with her San Bernardino case plan. The San Bernardino social worker stated she planned to recommend termination of mother's family reunification services in the San Bernardino case.

b. *Florida Dependency Proceedings*

Mother told a Department social worker she was arrested in Florida in 2012 for a drug-related offense. As a result of that arrest, mother "had some Child Protective Services involvement in Florida."

3. Instant Dependency Proceedings

a. *Events Preceding Dependency Petition*

Daughter was born in January 2017. She was born prematurely at 26 weeks and weighed approximately one pound nine ounces at birth. A nurse caring for daughter soon after her birth reported daughter was receiving various treatments, but overall was stable. Hospital staff reported mother and father visited daughter in the hospital somewhat regularly, often late at night, and sometimes only for a short time. Daughter remained in the hospital for almost five months following her birth.

A Department social worker spoke with mother after daughter was born. Contrary to what the San Bernardino social worker reported, mother stated she did not know she was pregnant with daughter until the month before she gave birth.

Mother said she did not receive any prenatal care. Mother stated she did not use drugs or drink alcohol during the pregnancy, although she smoked cigarettes. At daughter's birth, mother and daughter "tested negative." The day after daughter's birth, mother reported she last used methamphetamine in August 2016. Mother reported father had a diagnosis of schizophrenia and bipolar disorder but was not currently receiving mental health services or taking any prescribed medications.

By mid-March 2017, daughter no longer was covered by medical insurance, but she was not yet healthy enough to leave the hospital. Hospital staff had difficulty contacting mother and father, which was "a big concern for the hospital."

The Department social worker tried to meet with mother and father for most of the month of March 2017. Finally, on March 30, 2017, they met at the house where mother and father were renting a room. Three other adults lived in the house and two others lived in detached units on the property, some of whom had histories of drug-related arrests. Although mother and father did not have supplies to care for an infant, the social worker found the inside of the home appropriate. However, the outside yards of the home were not safe for daughter because among other things a motorcycle mechanic shop operated there. Father confirmed mother's report concerning his untreated diagnosis of bipolar disorder. Father also told the social worker he had abused drugs 15 years earlier and methamphetamine was his preferred drug. Father denied current drug use. Mother explained to the social worker that transportation issues prevented her from completing her court-ordered services in the San Bernardino case. Both mother and father agreed to submit to a drug test and understood that if they did not appear for the

test, it would be considered a positive test. Neither mother nor father appeared for their drug test.

A Department social worker also spoke with daughter's maternal step-grandmother. Maternal step-grandmother and maternal grandfather had been taking care of mother's three older children for over one year. Maternal step-grandmother told the social worker they were not planning to care for the older children on a long-term basis and could not care for an infant with special needs. She said the older children would be placed with a maternal aunt in Florida, who had expressed a desire to have daughter placed with her as well. Maternal step-grandmother stated it had been four months since mother had visited her three older children. Maternal step-grandmother was concerned about father's violent threats against her as well as mother's drug abuse. She also told the social worker mother revealed her pregnancy in September 2016 and had admitted to using drugs while pregnant with daughter. Maternal step-grandmother said mother had a dependency history in Florida regarding her older children.

In early April 2017, before daughter was released from the hospital, the juvenile court granted the Department's request for an order removing daughter from mother and father.

b. *Dependency Petition and Detention*

On April 12, 2017, the Department filed an eight-count petition under Welfare and Institutions Code section 300 on behalf of daughter (petition).[1] The petition alleged daughter was at risk of serious harm because of both mother's and father's substance abuse, both mother's and father's mental and

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

emotional problems, and mother's physical abuse of daughter's half sibling.

At the detention hearing held the same day the juvenile court ordered daughter detained from both mother and father. The court ordered the Department to provide family reunification services for daughter and her parents, including monitored visits. The court also ordered mother and father to participate in weekly random drug testing.

c. *Further Investigation*

Following daughter's detention, a Department social worker interviewed various family members and others who knew the family.

Mother admitted to prior drug use, including methamphetamine and marijuana, but stated she had not used drugs since August 2016 and did not use them in front of her children. She also stated she was sober between 2004 and 2015 but had relapsed. Mother denied physically abusing her oldest daughter. Mother stated she had been hospitalized for severe anxiety in 2016 but was not prescribed medication upon her release. However, she said she had taken prescribed psychotropic drugs in the past. Father reported mother took "a pill" to help with her anxiety.

Father denied using drugs and reported he had never seen mother use drugs. He also denied having a history of domestic violence. Eventually, however, father admitted he had abused drugs in the past but had stopped, and the drugs were to blame for his domestic violence troubles, which were "long ago." Father stated he was diagnosed with bipolar disorder and had been hospitalized in 2005 for mental health issues. He was not currently taking medication for his mental health and he had

never received therapy. A paternal cousin told a Department social worker father "is supposed to be taking medication and is supposed to be seeing a psychiatrist 'to balance out chemically.' " In late April 2017, father was arrested after he shot a man in the face with a BB gun.

The social worker also interviewed maternal grandfather and maternal step-grandmother, both of whom indicated mother had a drug abuse problem. Maternal grandfather indicated mother's 2016 mental health hospitalization was related to her drug use and not a mental health issue. Both maternal grandparents indicated they had heard conflicting stories concerning whether mother physically abused daughter's half sibling. Maternal step-grandmother revealed mother and father threatened not only to take the older children from the maternal grandparents but also to have the maternal grandparents beaten up.

The social worker spoke with hospital staff caring for daughter. As of April 28, 2017, daughter was ready for discharge. However, she remained on a hospital hold because a suitable placement for her had not been found. A paternal cousin had indicated an interest in caring for daughter. However, there were concerns father would not follow visitation guidelines and perhaps would kidnap daughter if she were placed with the paternal cousin. The Department determined it best to place daughter with a foster family upon her release from the hospital. Toward the end of April 2017, father threatened to take daughter from the hospital, although he never did. It also was reported mother and father visited daughter less frequently that April. However, mother explained to a Department social worker she had not been visiting daughter because mother had strep throat.

As of May 1, 2017, the San Bernardino social worker reported mother still had not completed any required services for the San Bernardino case and her visits with her three older children remained suspended because of her threats to abscond with them. A Department social worker also reported mother and father failed to attend four scheduled appointments with the social worker to discuss the case. Mother and father also failed to appear for drug tests.

d. *Adjudication*

The adjudication hearing was held on May 4, 2017. At the hearing, the juvenile court sustained as amended the subdivision (b) counts based on both mother's and father's drug abuse and mental health issues and the subdivision (j) count based on mother's physical abuse of daughter's half sibling. The court dismissed the remaining counts. Daughter remained detained.

e. *Disposition*

The disposition hearing was held the following month, on June 19, 2017. Prior to the hearing, the Department filed two last minute informations with the court. The Department reported mother and father had had minimal if any contact with the Department and neither had visited daughter in the hospital since the last hearing. In addition, mother and father had been "no shows" for their drug testing. Over the past month, mother had five no shows and father had eight. The Department also reported mother and father made an unannounced visit to Department offices the week before the disposition hearing. Father was angry and aggressive with a Department social worker, stating he had not received sufficient information regarding drug testing. Mother told the social worker she had not enrolled in any treatment services.

As of mid-June, daughter had been placed in the home of a foster family. Mother and father had one monitored visit with daughter in a public setting prior to the disposition hearing.

The juvenile court ordered daughter removed from mother and father. The court ordered monitored visitation for mother, as well as individual counseling, drug and alcohol counseling, a parenting program, and random weekly drug and alcohol testing. The court also ordered mother to undergo a psychological assessment.

f. *Status Reports and Review Hearings*

In August 2017, and as a result of violent threats father made during visits with daughter and his subsequent arrest, the juvenile court suspended father's visits with daughter unless they occurred at a police station with the Department as monitor. By the end of September 2017, father's whereabouts were unknown. In November 2017, the court ordered father's visits suspended until he completed a psychological assessment and "is testing clean."

In late November 2017, the Department filed a status review report. The Department stated daughter remained in the same foster home, where she was thriving. Her foster parents wanted to adopt her if she did not reunify with her parents. As to mother and father, the Department reported neither had enrolled in court-ordered services or programs. Between June and October 2017, mother failed to appear for 15 out of 17 random drug tests. During that same time, mother tested negative twice. Father missed all his 18 drug tests. In addition to father's August arrest, mother was arrested in October because the person with whom she was with was in possession of

methamphetamine and mother had an outstanding warrant. At the time of the Department's report, mother was on probation.

The Department also reported that during June and July 2017, mother and father regularly visited with daughter at Department offices. Those visits went well. However, following father's August 2017 threats, father stopped visiting daughter and mother visited daughter sporadically. The Department stated mother sometimes visited with daughter regularly but sometimes "seems to go off track" and had missed 10 visits between August and November 2017.

In late February 2018, the Department filed an interim review report. The Department reported daughter remained with the same foster family and mother had been visiting daughter consistently. Mother's visits with daughter were monitored and went well. However, as of the February 2018 report, mother still had not enrolled in any court-ordered programs or services and had not been participating in weekly drug testing. The Department recommended terminating reunification services.

In March 2018, nine months after disposition, the juvenile court held a review hearing and found mother's progress on her case plan was "minimal." Nonetheless, the court continued mother's reunification services. Although the record is confusing, at some point either in March or April 2018, the juvenile court terminated father's reunification services.

In an April 2018 status review report, the Department stated daughter—then 13 months old—remained with the same foster family, where she had lived for close to a year. Daughter continued to thrive. The Department reported mother had enrolled in an inpatient substance abuse program in March 2018.

When admitted into the program, mother tested positive for amphetamines and methamphetamines. Over the next few weeks, mother had two negative tests and one "no show." Mother had not enrolled in a parenting program or attended to her mental health needs as ordered by the juvenile court. Mother had participated in one individual counseling session. Because she had entered an inpatient program, mother did not visit with daughter in March 2018. By April 2018, however, mother was permitted to leave the program for weekly monitored visits with daughter at Department offices. The Department reported on one April visit, which went well. Father's whereabouts were unknown, and he never appeared for his drug tests. Mother told a Department social worker she no longer had a relationship with father, she did not know where he was, and she did not want him to know where she was. The Department again recommended terminating reunification services.

In July 2018, the Department filed another interim review report. The Department reported mother had completed the inpatient substance abuse program on May 6, 2018. Mother began an outpatient program a few weeks later, where she attended group sessions three to four times a week as well as weekly individual counseling sessions. It was unclear, however, whether mother was addressing case issues in counseling and whether her counselor was a licensed therapist or intern. Mother had six drugs tests, all of which were negative. She also completed a parenting program. Mother stated she had undergone a psychological assessment and was prescribed medication; however, the Department had been unable to verify this information. Mother had seven monitored visits with daughter during May and June 2018. Mother was appropriate

and she and daughter appeared to enjoy their visits together. Although mother was progressing with her court-ordered programs and services, the Department continued to recommend termination of reunification services.

In July 2018, the juvenile court found mother's progress had been "partial," terminated mother's reunification services, and set a permanency planning hearing.

g. *Permanency Planning and Termination of Parental Rights*

Prior to the permanency planning hearing, the Department submitted several reports for the court. In an October 2018 report, the Department stated daughter continued to do well with her foster parents, who continued to express their desire to adopt daughter. The Department also reported mother's visits with daughter had been "fairly consistent" and "positive." Mother brought snacks, toys, and clothing to the visits, changed daughter's diaper, and played with her. The visits remained monitored.

In a December 2018 report, the Department again stated daughter was thriving in the care of her foster parents. Between July 10 and November 3, 2018, mother had 14 weekly monitored visits with daughter. Each visit lasted two and one-half hours, and mother had canceled only once. The visits were monitored at a Department office. The Department also reported that, despite its efforts, it had not been able to verify mother's participation in court-ordered programs other than the 60-day inpatient program and the "Nurturing Program" she had completed earlier in the year.

The Department consistently recommended to the juvenile court a permanent plan for daughter of adoption by her foster

parents, with whom daughter had lived her entire life outside the hospital. At a January 8, 2019 hearing, the juvenile court ordered adoption as the permanent plan.

In February 2019, the Department noted mother's visits with daughter had decreased to once a month because of Department staffing issues but the Department was ready to increase mother's visits back to the regular weekly schedule. Mother's visits with daughter continued to go well. Mother brought a "supply bag" to the visits, with toys, food, and stuffed animals. During visits, mother was able to keep daughter's interest. Mother soothed, played with, sang to, changed, and fed daughter. The Department described the visits as positive.

The court held the permanency planning hearing on February 13, 2019, when daughter was just over two years old. Mother testified at the hearing. Mother said she had been visiting with daughter "on average" once a week but, over the previous four months, the Department had difficulty providing monitors and mother's visits decreased as a result. Mother explained her visits with daughter included reading, eating snacks, and playing with daughter's preferred toys. Mother testified that, at the visits, daughter would run to mother and was always "very happy" without hesitation to see mother even after longer times apart. Mother stated daughter did not like it when the visits ended and would cling to mother. Mother believed she "absolutely" shared a strong parent-child bond with daughter.

Following mother's testimony, the court heard argument from counsel. Mother's counsel asked the juvenile court not to terminate mother's parental rights. Citing mother's testimony that she shared a deep bond with daughter and had high quality

visits with her, counsel argued the parent-child exception to adoption existed. Counsel stated, despite daughter being out of mother's care, mother had acted as a parent to her and believed daughter would be harmed if her relationship with mother were terminated. Counsel acknowledged a "dearth of evidence" on the matter but stated mother believed daughter would suffer emotional harm if her relationship with mother ended. On the other hand, counsel for the Department and counsel for daughter argued no exception to adoption applied and the juvenile court should terminate parental rights.

The juvenile court held daughter was adoptable and adoption was in daughter's best interest. Although the court found mother had "maintained regular visitation with the child," the court determined mother had not established a bond with the child. The court stated, "There has been some connection but there has not been anything to indicate that there is a sufficient emotional attachment or significant positive, emotional connection that would outweigh the benefits of adoption or that there [would] be a detriment if, in fact, there wasn't continuation of parental rights." Thus, the juvenile court held any benefit daughter received from her relationship with mother was outweighed by the physical and emotional benefit daughter would receive through the permanency and stability of adoption. Finding no exception to adoption applied, the juvenile court terminated mother's and father's parental rights to daughter. The court ordered adoption as daughter's permanent plan, with her foster parents as her prospective adoptive parents.

4. ICWA Facts and Proceedings

In the San Bernardino case, mother's family indicated mother had Yaqui Indian ancestry. The Department reported

this information to the juvenile court in the instant case. Attached to an April 2017 addendum report in the instant case, the Department included the San Bernardino jurisdiction and disposition report. That report stated, "The family reports the mother may have Indian Heritage of the Yaqui Tribe," and "mother denied having any Indian Heritage."

Before and during the April 2017 detention hearing in the instant case, mother and father both indicated Indian ancestry. Mother stated she is or may be a member of the Cherokee Indian tribe. Father stated he had either or both Cherokee and Blackfoot Indian ancestry. The juvenile court ordered the Department "to conduct an ICWA investigation in this matter" and "notice the B.I.A, the Secretary of the Interior, and the Blackfoot and Cherokee tribes."

In its May 4, 2017 jurisdiction and disposition report, the Department noted mother claimed "possible Cherokee Indian heritage" and in the San Bernardino case "claimed having Yaqui Native Indian heritage." The Department stated, "The ICWA notices will be completed accordingly, following further interviews with the parents." A Department social worker reported mother provided limited family history but offered to provide the maternal grandmother's contact information. Based on "the limited information provided," the Department sent the required ICWA notices to the Cherokee and Blackfeet Indian tribes, as well as to the Bureau of Indian Affairs and the Secretary of the Interior. Notice was not sent to the Yaqui tribe.

At the May 4, 2017 adjudication hearing, the juvenile court ordered the Department to provide an update on its ICWA investigation. Accordingly, attached to a June 2017 last minute information for the court filed the day of the disposition hearing,

the Department included notices sent to the Cherokee and Blackfeet Indian tribes, as well as to the Bureau of Indian Affairs and the Secretary of the Interior. On June 6, 2017, the Eastern Band of Cherokee Indian tribe reported daughter was neither registered nor eligible to register as a member of that tribe.

At the June 19, 2017 disposition hearing, the juvenile court denied father's request for a continuance pending proper ICWA notice. The court found ICWA notice "proper but not timely" and informed all counsel "that, should any Native American tribe seek to intervene in this matter, disposition findings will be readdressed."

In August 2017, the juvenile court found the ICWA did not apply.

After briefing in this appeal was complete, we requested further briefing related to ICWA notice in the San Bernardino case. In particular, we asked whether in the San Bernardino case ICWA notice was sent to the Yaqui Indian tribe and, if so, how that tribe responded to the notice. The Department located and, on October 15, 2019, forwarded to this court a November 2016 report filed in the San Bernardino case as well as ICWA notices from the San Bernardino case.[2] The November 2016 San Bernardino report stated, "The Indian Child Welfare Act does or may apply," and "Maternal relatives stated . . . that they are part of the Pascua Yaqui tribe." The report "confirm[ed] the ICWA030 [notice] and petition were sent on 5/4/16 via certified mail, return receipt requested, to the BIA, Secretary of the Interior, and Tribes indicated above, as identified by parents." Finally, the report stated, "The Department has received a response from the

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[2] We take judicial notice of the documents attached to the Department's October 15, 2019 letter.

Pascua Yaqui indicating the child does not qualify for membership." Mother's counsel filed a response to the Department's October 15, 2019 letter, arguing the San Bernardino notices and tribe's response were "not fungible evidence" and did not satisfy the ICWA requirements for this case.

5. Appeal

Mother appealed the juvenile court's February 13, 2019 order terminating her parental rights to daughter.

DISCUSSION

1. Termination of Parental Rights

Mother argues the juvenile court erred when it held the beneficial parental relationship exception to adoption did not apply. Mother claims she established regular visitation with daughter and, instead of adoption, the juvenile court should have protected her parental relationship with daughter by ordering legal guardianship or long-term foster care.

a. *Applicable Law*

At the section 366.26 permanency planning hearing, "the juvenile court selects and implements a permanent plan for the dependent child." (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299.) At that stage of the proceedings, the preferred plan for the dependent child is adoption. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.) "If there is clear and convincing evidence that the child will be adopted, and there has been a previous determination that reunification services should be ended, termination of parental rights at the section 366.26 hearing is relatively automatic." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 447.)

Nonetheless, there are statutory exceptions to the preferred plan of adoption, one of which mother raises here. "One exception to adoption is the beneficial parental relationship exception. This exception is set forth in section 366.26, subdivision (c)(1)(B)(i) which states: '[T]he court shall terminate parental rights unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.' " (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Thus, at the permanency planning hearing, the juvenile court conducts a two-step inquiry. "First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. [Citations.] Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies." (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 645–646.)

For the beneficial parental relationship exception to apply, the parent "has the burden of proving her relationship with the children would outweigh the well-being they would gain in a permanent home with an adoptive parent." (*In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Courts consider "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) "A showing the child

derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. [Citation.] No matter how loving and frequent the contact, and notwithstanding the existence of an ' "emotional bond" ' with the child, ' "the parents must show that they occupy 'a parental role' in the child's life." ' " (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *Noah G.*, at p. 1300 ["Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. [Citations.] The mother also must show she occupies a parental role in the children's lives"].) "Moreover '[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.' " (*In re Breanna S.*, at p. 646.)

b. *Standard of Review*

In reviewing challenges to the juvenile court's decision as to the applicability of an exception to adoption, we employ the substantial evidence or abuse of discretion standard of review, depending on the nature of the challenge. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080.) We "apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues," such as the existence of a beneficial parental relationship. (*Ibid.*) However, given the existence of a beneficial parental relationship, we review for an abuse of discretion the juvenile court's determination as to whether termination of parental rights would be detrimental to the child as weighed against the benefits of adoption. (*Ibid.*; see *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) Such decisions are

" ' "quintessentially discretionary." ' " (*In re J.S.*, at p. 1080.) "In the dependency context, both standards call for a high degree of appellate court deference." (*Ibid.*)

c. *No Error*

It is undisputed daughter was likely to be adopted in a reasonable amount of time. And we assume substantial evidence supports a finding of a beneficial parental relationship between mother and daughter. Thus, our review focuses on whether the juvenile court abused its discretion in finding the beneficial parental relationship did not outweigh the well-being daughter would gain in a permanent home with her adoptive parents. As explained below, we find no abuse of discretion.

As mother points out and the juvenile court recognized, for a period of many months leading up to the permanency planning hearing, mother and daughter enjoyed regular and positive visits together. During that time, the Department reported no problems or concerns with mother's visits. Daughter was happy to see and interact with mother. However, that is only part of the picture. Mother's visits with daughter were always monitored by a Department monitor at Department offices. Daughter never lived with mother, but instead had lived with her prospective adoptive parents, her foster parents, her entire life outside the hospital. Daughter was bonded with and thriving in the care of her foster parents. Thus, although daughter derived some benefit from her relationship with mother, the juvenile court did not abuse its discretion when it found that relationship did not outweigh the stability and well-being daughter would gain in a permanent home with her adoptive parents. (*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Noah G.*, *supra*, 247 Cal.App.4th at p. 1300.) Indeed, mother's counsel below

recognized there was a "dearth of evidence" to indicate daughter would suffer any harm if her relationship with mother ended. Accordingly, we conclude the juvenile court did not err in terminating mother's parental rights to daughter.

2. ICWA

Mother also argues the juvenile court erred by finding the ICWA did not apply. Specifically, mother claims the court failed to ensure the Department sent ICWA notice of the instant proceedings to the Yaqui Indian tribe. Although we agree the juvenile court erred, we conclude the error was harmless and not a ground for reversal.

a. *Applicable Law and Standard of Review*

As the parties agree, if the juvenile court knows or has reason to know that an Indian child is involved in the case, the Department must send the specified notice to the identified tribes or, if no specific tribe is identified, to the Secretary of the Interior. (25 U.S.C. § 1912.) California law similarly requires notice to the Indian tribe and the parent, legal guardian, or Indian custodian if the juvenile court or the Department "knows or has reason to know" the proceeding concerns an Indian child. (Welf. & Inst. Code, § 224.3, subd. (a); Cal. Rules of Court, rule 5.481(b)(1).) The ICWA notice requirement is essential 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. (25 U.S.C. § 1912(a); see Welf. & Inst. Code, [former] § 224.2, subd. (d).)" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 5.)

Statutory law as well as California rules and federal regulations provide examples of what constitutes "reason to know" an Indian child is involved. (E.g., § 224.2; Cal. Rules of Court, rule 5.481(a)(5); 25 C.F.R. § 23.107(c).) "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.' " (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784, fn. omitted, quoting former section 224.3, which was in effect at the time of the underlying proceedings.)

We review the juvenile court's determination that the ICWA does not apply for substantial evidence. (*In re E.W.* (2009) 170 Cal.App.4th 396, 404.) Under this standard, we uphold the juvenile court's findings if any substantial evidence, contradicted or uncontradicted, supports them. We must resolve all conflicts in favor of the court's determination and indulge all legitimate inferences in favor of affirmance. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

"A notice violation under ICWA is subject to harmless error analysis. [Citation.] 'An appellant seeking reversal for lack of proper ICWA notice must show a reasonable probability that he or she would have obtained a more favorable result in the absence of the error.' " (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 715.)

b. *Harmless Error*

The Department concedes the Yaqui Indian tribe was not notified of these proceedings. The Department takes the position it was not required to notify the Yaqui Indian tribe of these proceedings. The Department bases its position on two points. First, the Department states in the San Bernardino case it was mother's family—not mother—who mentioned Yaqui Indian tribe ancestry. Second, the Department notes that during the underlying proceedings here, the juvenile court and the Department inquired as to mother's Indian heritage and she did not mention the Yaqui Indian tribe. We are not persuaded by the Department's position.

Here, a specific tribe, the Yaqui Indian tribe, was identified in the San Bernardino case. The Department and the juvenile court in these proceedings were aware of that information. It is undisputed that, despite that awareness, the Yaqui Indian tribe was not notified of these proceedings. It is immaterial that the Yaqui Indian tribe information did not come from mother herself. The juvenile court and the Department "must act upon information received from any source, not just the parent." (*In re K.R.* (2018) 20 Cal.App.5th 701, 706.) This is not a case where a parent or other family members made vague references to unnamed Indian tribes. Here, a specific tribe was named, after which the record as to that tribe essentially fell silent. From our review of the record, mother's claimed Yaqui Indian ancestry (albeit made in a separate proceeding) is similar to her claimed Cherokee Indian ancestry and should have been treated the same; i.e., notice should have been sent to the Yaqui Indian tribe. Because ICWA notice was not given to the Yaqui Indian tribe, we

conclude substantial evidence does not support the juvenile court's finding that the ICWA did not apply.

Having found error, we turn to the question of whether it was harmless. As noted above, in the San Bernardino case, the Yaqui Indian tribe responded to ICWA notices stating mother's three oldest children were not eligible to be members of that tribe. In light of those responses, we conclude daughter cannot show she would have obtained a different let alone more favorable result had the Yaqui Indian tribe been notified in the underlying proceedings. Accordingly, we conclude the ICWA errors here were harmless.

In her response to the Department's October 15, 2019 supplemental letter brief, mother's counsel argues the notices and Yaqui tribe's response in the San Bernardino case cannot be relied upon in this appeal. To the extent the cases on which mother relies for her position are relevant or apply here, we decline to follow them. We do not rely on the San Bernardino notices and tribe's response to find no error below. Rather, we rely on them to show the error below was harmless, which we conclude to be the proper approach given the circumstances of this case. (See *In re Z.N.* (2009) 181 Cal.App.4th 282, 298–301.)

DISPOSITION

The February 13, 2019 order is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.