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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re GRACIELA O., A Person Coming Under the Juvenile Court Law.	B237148
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent. v. M. M. et al., Appellants.	(Los Angeles County Sup. Ct. No. CK85809)

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed in part, reversed in part and conditionally remanded.

Michael A. Salazar, under appointment by the Court of Appeal, for Appellant M. M.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Angela Williams, Deputy County Counsel, for Respondent.

Patti L. Dikes, under appointment by the Court of Appeal, for Minor.

This appeal concerns Graciela O. (Graciela), who was one year old when the underlying dependency action was commenced. The following issues are raised on appeal: (1) whether the juvenile court erred in granting additional reunification services; (2) whether substantial evidence supports the juvenile court's finding that the Los Angeles County Department of Children and Family Services (DCFS) offered reasonable reunification services under Welfare and Institutions Code section 366.21(e);[1] and (3) whether the juvenile court and DCFS failed to make a proper inquiry to determine whether the Indian Child Welfare Act of 1978 (25 U.S.C., § 1901 et seq.; ICWA) applied.

We conclude reasonable reunification services were offered and the juvenile court did not abuse its discretion in granting additional reunification services, but the court did not properly comply with ICWA notice requirements. We reverse the order terminating reunification services and remand the matter for the limited purpose of investigating whether Graciela has Indian heritage.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2010, Amber O. (Mother)[2] and M. M. (Father) came to the attention of DCFS when it received a referral alleging physical and emotional abuse and general neglect of their one-year-old child, Graciela. The referral stated that Mother was bipolar and did not take her medications regularly, that she had another child that had been taken away by Arizona Child Protective Services, and that Father "beats up on" Mother in the presence of Graciela. The investigator found that Mother and Father had a history of domestic violence. On or about November 12, 2010, Father repeatedly struck Mother, inflicting bruises to her left arm, right arm, and right shoulder. On July 5, 2009, when Mother was five months pregnant with Graciela, Father grabbed her by the neck, forcibly

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

[2] Mother is not a party to this appeal. We discuss allegations against her and events involving her only to the extent that they also relate to Father.

pushed her against a wall, and struck her in the stomach. After the attack, Mother required emergency medical treatment.

The investigator found that Mother had a history of mental and emotional problems, including a diagnosis of bipolar disorder. Mother failed to regularly take psychotropic medication as prescribed, making it difficult for her to provide regular care for Graciela. Additionally, it was found that Mother had a history of substance abuse and currently used cocaine and marijuana. On August 24, 2010, she had a positive toxicology screen for cocaine.

The investigator found that Father also had a history of substance abuse, currently used methamphetamine, and had been arrested in 2005 for narcotics possession.

After interviewing Mother, Father, and family members, DCFS requested that both Mother and Father submit to on-demand drug testing and recommended individual counseling, parenting classes and domestic violence awareness classes. Mother and Father were provided with low cost referrals for services in the community. Over the following three months, Father missed three drug tests, and neither parent attended individual counseling, parenting classes, or domestic violence awareness classes. After an investigation, DCFS substantiated the allegations of general neglect and emotional abuse against Mother and Father and determined that Graciela was at "very high" risk for future abuse or neglect.

1. The Petition and Detention Under Section 300, subdivisions (a) and (b)

On December 20, 2010, DCFS filed a petition alleging Graciela was at risk of serious physical harm due to Father's ongoing domestic abuse against Mother, Mother's substance abuse, mental illness, and emotional problems, her failure to take prescribed medications, and Father's substance abuse. The court reviewed the petition at a hearing held on the same day. At the hearing, Mother stated that she might have Indian ancestry, specifically that her maternal great-grandmother may have been a Cherokee tribal member and that her grandmother may have received tribal benefits. She stated that her maternal uncle had information regarding the family's tribe membership and provided his

contact information. In its December 20, 2010 minute order, the court ordered DCFS to conduct an investigation as to the claim.

Based on the allegations contained in the petition and information provided by DCFS regarding ongoing substance abuse and domestic violence in the home, the court found Graciela faced a substantial risk of danger if she were to remain in her parents' home. The court ordered her removed from her parents' care and placed into a foster home. The court ordered family reunification services and visitation with Graciela three times a week for Mother and Father.

In a jurisdictional report dated January 27, 2011, DCFS reported they had attempted to contact Mother's maternal uncle regarding the family's Indian ancestry and tribal membership, but were unable to reach him. DCFS stated it would continue its investigation into Graciela's possible ICWA status.

During the months following the December hearing, Mother and Father struggled to comply with court orders, often showing up late to visits with Graciela and occasionally missing visits altogether. Though they were both provided with community referrals for mental health services, domestic violence classes, counseling, and parenting classes during their meeting with a DCFS Multidisciplinary Assessment Team, Father did not seek mental health services, domestic violence classes, counseling, or parenting classes.

2. Jurisdictional/Dispositional Findings and Orders Regarding Family Reunification Services

On March 7, 2011, the juvenile court held a jurisdiction and disposition hearing. After Mother and Father pleaded no contest to the allegations in the petition, the court sustained allegations regarding history of domestic violence and Mother's history of substance abuse and emotional problems. It was disclosed that Mother and Father had struggled with visitation and had either been late or failed to attend the last seven visits. Over the objections of DCFS, the court nevertheless renewed their three-times-per-week visitation plan. The court found that reasonable efforts and services had been provided to prevent Graciela's detention, but substantial danger would still exist to her safety and

well-being if she were to be returned to her parents. Graciela was declared to be a dependent of the court under section 300, subdivision (b), and family reunification services were ordered.

In its interim report, DCFS had stated it was unable to secure an interview with Mother's maternal uncle regarding the family's possible Indian ancestry and recommended that the court find the ICWA did not apply. The juvenile court never addressed DCFS's recommendation. In later reports, DCFS nevertheless stated without explanation that "The Indian Child Welfare Act [did] not apply."

As part of family reunification, both parents agreed to court-ordered case disposition plans. Father's case plan included drug tests, parenting classes, individual counseling to address substance abuse and domestic violence issues, and monitored visitation a minimum of three times per week. The court advised, "[T]hey need to be in full compliance. In order to be reunified, the parents will have to demonstrate the ability to meet the physical and emotional needs of the child." With regard to drug testing the court warned Father, "If you miss a test, it's considered the same as a positive test. In other words, a dirty test. If [you do] miss a test or test dirty, [you] must then participate in a drug treatment [program] with an A.A. or N.A. sponsor."

According to the DCFS service log, in the months following the March 7, 2011 jurisdiction and disposition hearing, two different social workers were assigned to the case, one beginning in March and the other in July. Father informed the first social worker that he had enrolled in regular parenting classes, and his attendance record showed he consistently attended the classes. However his visits with Graciela continued to be inconsistent. Graciela's foster mother reported that Father missed two weeks of visits in May, she often had to call Mother and Father to arrange visits, their phone was often disconnected, and they had once changed their phone number without alerting her. On May 16, 2011, the social worker requested a visitation monitor referral to assist with the ongoing visitation issues. In June there was no communication between Father and DCFS, and he continued to miss both visits and on-demand drug tests. On June 29, 2011, Father tested positive for methamphetamine.

In July 2011, a new social worker was assigned to the case but had trouble meeting with Mother and Father because their phone was disconnected and they had failed to notify DCFS that they had moved to a new address. Father ultimately provided the social worker with a new telephone number and address, but a few days later the new phone number was disconnected as well. The social worker called Graciela's foster mother looking for contact information for the parents, but the foster mother did not have a working phone number for them.

On August 24, 2011, the new social worker was able to meet with both parents. By that time, Mother and Father had been under the purview of DCFS for over eight months but had failed to complete their court ordered reunification requirements. The social worker provided the parents with additional referrals to help them complete their case plans. By September, Father was attending visits with Graciela on a regular basis and had completed parenting classes. Even though his compliance with the disposition plan had improved, the social worker's September report expressed concerns that Father would not complete all of the required programs before the six month status review hearing, which was fast approaching.

Meanwhile, Graciela thrived in her placement. She had been moved from her original foster home placement to the home of her father's friend, a woman who ran an in-home daycare. She had bonded well with her new foster family and enjoyed playing with the children that attended the daycare. Although she had shown some problems at her previous foster home, including involuntary shaking and aggressive behavior with other children, in the new placement she was happy and her development progressed normally.

3. Six Month Status Review Hearing, Contested Hearing, and Continuation of Family Reunification Services

At the September 7, 2011 status review hearing, the court stated, "[B]oth mom and dad are not in compliance with the case plan, both are struggling with substance abuse, yet testing positive for methamphetamine, for father, and failing to submit [to drug tests] six other times." DCFS recommended termination of family reunification services.

Mother and Father objected to the termination of services, and the court set the matter for a contested hearing.

At the contested status review hearing on October 18, 2011, the court considered whether to continue or terminate reunification services. Father requested continued services. By that time, he had enrolled in a drug treatment program and was regularly making his visitation appointments with Graciela. Additionally, he reported he had recently enrolled in individual counseling and completed his parenting classes. In light of these changes, DCFS recommended that reunification services continue for an additional six months. Graciela's counsel objected to the continuation of services and requested that reunification be terminated.

At the conclusion of the hearing, the court found that DCFS had made reasonable efforts to reunite the family and found Mother and Father were in minimal compliance with the court's orders. The court retained jurisdiction over Graciela and granted continued reunification services. The court stated, "[T]hese parents need to demonstrate some sincere effort that they continue with what they've done. I certainly don't intend to give them another chance. I do agree that if you really want your child back, you don't need somebody to take you by the hand and lead you."

On October 21, Father filed a timely notice of appeal challenging the finding that reasonable efforts had been made pursuant to section 366.21(e) to reunite the family. On November 15, 2011, Graciela filed a timely notice of appeal from the court's order granting additional family reunification services for both parents.

Seven months later, on May 4, 2012, the juvenile court terminated reunification services and set the case for a permanency hearing pursuant to section 366.26.

DISCUSSION

I. DCFS's Request for Judicial Notice and Motion to Dismiss

On May 25, 2012, DCFS filed a request that this court take judicial notice of the juvenile court's May 4, 2012 order terminating Mother's and Father's reunification services and setting a permanency hearing under section 366.26. We grant the request. DCFS also filed a motion to dismiss Graciela's appeal as moot based on the May 4, 2012

order. In reply, Graciela argues that although she would not oppose dismissal of that part of the appeal pertaining to reunification services, she maintains that DCFS failed to comply with the ICWA. We agree with Graciela that issues regarding the ICWA are not moot, and thus deny DCFS's motion to dismiss her appeal.

II. Graciela O.'s Appeal of the Order Extending Reunification Services is Moot

Graciela appeals the juvenile court's October 18, 2011 order extending reunification services. However, after the appeal was filed, the juvenile court terminated reunification services altogether pursuant to section 366.21, subdivision (f). An appellate court's jurisdiction extends only to actual controversies for which it can grant effective relief. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) If subsequent acts or events have rendered the questions raised in the appeal moot, then those issues no longer present a justiciable controversy. (*In re Christina A., supra,* at p. 1158.) Because reunification services were terminated in May 2012, Graciela's appeal of the earlier order extending services is moot.

III. The Juvenile Court's Finding That Reasonable Reunification Efforts Had Been Made Pursuant to Section 366.21, subdivision (e) is Affirmed

Father argues no substantial evidence supported the finding that DCFS offered reasonable reunification services. We disagree.

a. Standard of Review

When a finding that reunification services were adequate is challenged on appeal, the review is for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) We view the evidence in a light most favorable to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

b. Reasonableness of Services Provided

Generally, "DCFS is required to make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the

parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult.' [Citation.]" (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554-555.) We recognize that in most cases more services might have been provided, and the services provided are often imperfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) But, "[t]he standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.)

Graciela was removed from parental custody when the court determined there was a serious risk of harm due to the parents' history of domestic violence and substance abuse and Mother's history of mental illness. Father's case plan addressed these issues, and included drug testing, visitation, parenting classes, and individual therapy to address domestic violence and substance abuse. DCFS made efforts to maintain reasonable contact with Father even though his phone was sometimes disconnected and he changed his residence without notifying DCFS. When compliance with the plan proved difficult for Father, reasonable efforts were made to assist him, including DCFS offering a drug rehabilitation program when he failed drug testing. (*Armando L. v. Superior Court*, *supra*, 36 Cal.App.4th at pp. 554-555.)

Ample evidence supports the finding that DCFS provided Father with reasonable resources to complete the case plan. The problems he had in accessing services stemmed not from lack of services, but rather from his own inaction. "Reunification services are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]" (*In re Mario C.* (1990) 226 Cal.App.3d 599, 604.) Father's lack of effort cannot be charged to DCFS.

Citing *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158 (*Robin V.*), Father argues the reunification services were inadequate because DCFS did not make greater efforts to communicate with him, and "hung him out to dry." *Robin V.* is distinguishable. There, the father was incarcerated and actively sought contact with his social worker in order to facilitate reunification services, regularly calling the social worker and writing to

her to request information and parenting materials. Indeed, the court stated that the father, "from the first day to the last, expressed his desire to take custody of his daughter . . . for at least the first six months did everything possible to achieve his goal and . . . during the second six months, tried unsuccessfully to get the attention of the [social worker]." (*Robin V., supra,* 33 Cal.App.4th at p. 1166.) Here, father did not begin to come into substantive compliance with his disposition plan until September 2011, over a year after he first received service recommendations and referrals from DCFS. At its October 2011 hearings, the juvenile court found him to be in only minimal compliance with the disposition case plan. Neither incarceration nor lack of access to services restrained Father from complying with the plan, and it was his choice to wait so long to access mandatory services. Substantial evidence shows that reasonable reunification services were offered.

IV. The Court and DCFS Failed to Make a Proper Inquiry to Determine Whether the ICWA Applied

Father and Garciela both argue that DCFS failed to comply with the notification requirements of the ICWA. DCFS concedes the point.

The ICWA was enacted to protect the rights of Indian children and tribes. (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32.) "'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(4).) Under the ICWA, a party seeking foster care or termination of parental rights must notify an Indian child's tribe of the pending proceedings and of its right to intervene. (25 U.S.C., § 1912(a).) The notice provision applies if "the court knows or has reason to know that an Indian child is involved." (*Ibid.*) No more than a suggestion that a child might have Indian ancestry is required to trigger the notice provision. (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408.) The notice to a tribe must include a wide range of information about relatives, including grandparents and great grandparents, to enable the tribe to properly identify the children's Indian ancestry. (*In re C.D.* (2003) 110 Cal.App.4th 214, 225.)

Any failure to secure compliance with the notice provisions of the ICWA results in a prejudicial error and requires the appellate court to vacate the erroneous order and remand the matter for further proceedings consistent with the ICWA requirements. (*In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111-112.) On remand, the juvenile court must receive a tribal determination regarding the children's Indian ancestry before continuing termination and placement proceedings. (*Id.* at p. 112.)

Here, Mother stated she believed her family had Indian ancestry and suggested her maternal uncle might be able to assist DCFS in determining her family's heritage. Accordingly, the juvenile court ordered DCFS to make further inquiry. A DCFS report indicated that some attempts were made to contact Mother's maternal uncle, but those were unsuccessful. Later reports failed to indicate that further attempts were made. In fact, DCFS conclusorily stated in them that the ICWA did not apply. The juvenile court made no ICWA finding at any stage of the proceedings. DCFS concedes that the absence of such a finding was improper and requests reversal and conditional remand on this ground.

DISPOSITION

We affirm the court's order, made on October 18, 2011, in which it found DCFS had offered reasonable reunification services to Father. We reverse the May 4, 2012 order terminating reunification services and conditionally remand the matter. On remand, the juvenile court is directed to order DCFS to comply with the notice provisions of the ICWA. If after proper inquiry and notice no tribe indicates the child is an Indian child within the meaning of the ICWA, the juvenile court shall reinstate its minute order terminating reunification services and set a permanency hearing under section 366.26. If a tribe determines the child is an Indian child, the juvenile court shall conduct a

permanency planning hearing in conformity with all federal and California ICWA provisions.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.