

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re T.M., a Person Coming
Under the Juvenile Court Law.

B295045

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP05410)

Plaintiff and Respondent,

v.

S.M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Natalie Stone, Judge. Conditionally affirmed and remanded.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel for Plaintiff and Respondent.

S.M. (Mother), the mother of minor T.M., appeals from the juvenile court's dispositional orders on the ground that the court failed to ensure compliance with the notice requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)). We conditionally affirm the judgment and remand the matter to allow the juvenile court to comply with ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services filed a dependency petition in August 2018 alleging that 12-year-old T.M. came within the jurisdiction of the juvenile court under Welfare and Institutions Code¹ section 300, subdivision (b) (failure to protect) because Mother was unable to provide appropriate parental care and supervision for her.

At the start of the dependency proceedings Mother reported that she had Apache ancestry through her maternal great-grandmother, and she provided her great-grandmother's name. Although the maternal great-grandmother was deceased, Mother told the court that her uncle might have information about their Native American ancestry. The court ordered DCFS to follow up with Mother concerning her Native American ancestry; to attempt to speak with Mother's uncle to gather additional information for the notices; to send notices to the Apache tribes; and to mention the maternal great-grandmother by name in the notices.

T.M. was not detained when the dependency proceedings began, but in September 2018 DCFS requested that she be

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

detained from Mother due to Mother's substance abuse. The juvenile court detained T.M. and placed her in shelter care.

In advance of the jurisdictional hearing scheduled for November 5, 2018, DCFS reported to the juvenile court that it had interviewed Mother's maternal uncle concerning possible Apache ancestry. According to DCFS, the uncle said, "I haven't been tested or told. We could have some Apache in us because we are from Mexico. I couldn't swear to it. No one is registered with a tribe. I remember rumors growing up that we could have some Apache in us but it was nothing concrete. I'm sure you're not going to find anything because we [have] never been involved with any tribes or anything." The uncle stated that no other relatives could provide additional information. DCFS did not describe any further efforts to gather the information required for ICWA notices; it did not indicate that any notices had been sent; and it did not provide copies of ICWA notices to the court. However, DCFS did request in its report that the court "make an ICWA finding." DCFS recommended monitored visitation for Mother and family reunification services; DCFS did not recommend that T.M. be placed with Mother.

On November 5, the juvenile court continued the jurisdictional hearing to January 2019. The court ordered DCFS to provide ICWA notices to the Apache tribes.

DCFS provided a last minute information report to the juvenile court before the January 2019 jurisdictional hearing in which it stated that it had sent ICWA notices to eight Apache tribes, the Bureau of Indian Affairs, and the Secretary of the Interior. DCFS attached copies of the return receipts for the notices but did not provide copies of the notices themselves. Additionally, DCFS submitted response letters from some of the

tribes and reported that it had sent follow-up emails to the tribes that had not responded. With respect to T.M.'s placement, DCFS noted that her extended visits with Mother over the holidays had gone well, and it recommended family maintenance and other services for the family.

At the jurisdictional and dispositional hearing, ICWA was not mentioned by either the court or the parties, and the court did not make any ruling on its applicability. The juvenile court sustained the petition and declared T.M. a dependent child of the court. The court ordered T.M. placed in the home of Mother. Mother appeals.

DISCUSSION

ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7-8.) For purposes of ICWA, an “Indian child” is an unmarried individual under age 18 who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) [definition of “Indian child”] & (8) [definition of “Indian tribe”]; see § 224.1, subd. (a) [adopting federal definitions].)

As the Supreme Court explained in *In re Isaiah W.*, *supra*, 1 Cal.5th at pages 8 through 9, notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise

jurisdiction over the matter. ICWA provides, “In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe” of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a).) California law requires notice to the Indian custodian and the Indian child’s tribe for hearings that may result in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement if DCFS or the court knows or has reason to know that an Indian child is involved in the proceedings. (§ 224.3, subd. (a); see Cal. Rules of Court, rule 5.481(b)(1) [notice is 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,” which includes all dependency cases filed under section 300].) “The Indian status of the child need not be certain to invoke the notice requirement. [Citation.] Because the question of membership rests with each Indian tribe, when the juvenile court knows or has reason to believe the child may be an Indian child, notice must be given to the particular tribe in question or the Secretary [of the Interior].” (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.)

DCFS concedes that the juvenile court had reason to know that T.M. was an Indian child, and that although it provided return receipts and some responses from tribes prior to the jurisdictional hearing, it did not submit the notices sent to the tribes for the juvenile court’s review. Moreover, DCFS acknowledges that the juvenile court did not make a finding as to ICWA’s applicability at the jurisdictional hearing. DCFS, however, argues that the ICWA notice requirements were not

triggered in this case because T.M. was returned to Mother and DCFS no longer recommended her removal from Mother's custody. We disagree.

DCFS sought and obtained T.M.'s removal from Mother, and it recommended out of home placement until just before the January 2019 jurisdictional hearing. The change in recommendation appears to have occurred because of the success of extended holiday visits in December 2018. DCFS's change in recommendation was sufficiently recent that the case plan submitted to the court at the January 9, 2019 hearing continued to recommend suitable placement for T.M., prompting the juvenile court to say, "[N]ow, the case plan says suitable placement, but I thought the Department was recommending the family maintenance." Even though T.M. has now been placed with Mother by virtue of the home-of-parent order, "[t]he fact that the court later ordered the child placed in the custody of her [parent] did not nullify the ICWA notice provisions applicable in involuntary proceedings." (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 697.) Moreover, California Rules of Court, rule 5.480 requires ICWA inquiry and notice in all cases in which an Indian child may be involved, even if removal from the parent with Indian ancestry is not requested by DCFS or ordered by the court.

The juvenile court should have ordered and ensured compliance with the notice provisions, and it also should have complied with all requirements of ICWA in conducting hearings until such time that it was determined that T.M. was not an Indian child or that she was an Indian child but her tribe declined to intervene in the juvenile court proceedings. "The juvenile court's failure to secure compliance with the notice

provisions of the [ICWA] is prejudicial error.” (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.)

The proper remedy in this case is to “leave the juvenile court’s orders in place and effect a ‘limited remand’ to effect compliance with the ICWA.” (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 187; see also *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385 [proper remedy is a “limited remand to the juvenile court for the agency to comply with ICWA notice requirements, with directions to the juvenile court depending on the outcome of such notice”]; *In re Michael V.* (2016) 3 Cal.App.5th 225, 236.)

DISPOSITION

The judgment is conditionally affirmed, and the matter is remanded with directions that the juvenile court ensure compliance with the inquiry and notice provisions of ICWA and related California law. If, after proper inquiry and notice, it is determined that T.M. is an Indian child and ICWA applies to these proceedings, the juvenile court shall conduct new jurisdictional and dispositional hearings, as well as all further proceedings, in compliance with ICWA and related California law.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.