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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

B237137

(Los Angeles County
Super. Ct. No. CK06865)

APPEAL from orders of the Superior Court of Los Angeles County,
Marilyn H. Mackel, Juvenile Court Referee. Affirmed and remanded with directions.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, and Jacklyn K. Louie, Principal Deputy County
Counsel for Plaintiff and Respondent.

R.M. (mother) appeals jurisdictional and dispositional orders made with respect to her nine-year-old daughter, M.S. Mother contends the Department of Children and Family Services (the Department) failed to give adequate notice of the dependency proceedings as required by the Indian Child Welfare Act (ICWA). The Department has filed a letter brief in which it concedes the notices previously given lack crucial information and were not served on all relevant tribes. Thus, the Department has no opposition to remand for proper ICWA notice.

We affirm the juvenile court's jurisdictional and dispositional orders but accept the Department's concession and remand the matter to the juvenile court with directions to order the Department, if it has not already done so, to comply with the inquiry and notice provisions of the ICWA.

FACTS AND PROCEDURAL BACKGROUND

On April 4, 2011, the Department filed a dependency petition which alleged M.S. came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a), (b) and (g), based on domestic violence between mother and her male companion in the presence of the child, physical abuse of the child by mother and maternal grandfather, use of marijuana by mother, mother's failure to provide care for the child and father's failure to provide the necessities of life.

Attached to the dependency petition was an Indian Child Inquiry Attachment, form ICWA-010(A), which indicated, based on information obtained from paternal grandmother, M.S. is or may be eligible for membership in the Apache Chiracawa tribe in El Paso, Texas. The detention report noted the same information.

At the detention hearing, the juvenile court ordered M.S. to remain in shelter care and ordered mother to participate in individual counseling to address case issues and drug counseling with random testing.

The jurisdiction report filed May 10, 2011, included paternal grandmother's statement the Apache Chiricahua tribe of El Paso is not a federally recognized tribe but was registered with the Texas Intertribal Native Enrollment Agencies (TINEA) in San Antonio, Texas, and the tribe's registration number was TINEA #002471.¹ Paternal grandmother stated M.S. was enrolled in the tribe but father was not.

The report indicated the dependency investigator had consulted with the Department's American Indian Unit and was advised the Native American Coalition of Texas & Texas Apache Nations is located in El Paso, Texas. Further, the Chiricahua tribe is linked to the Apache (Chiricahua) Fort Sill Apache Tribe of Oklahoma.

On April 28, 2011, the Department served an ICWA-030 form ("Notice of Child Custody Proceedings for Indian Child") with respect to the May 10, 2011, pretrial conference hearing. The Department sent the notice to the Fort Sill Apache tribe, the Native American Coalition of Texas & Texas Apache Nations, TINEA, the Bureau of Indian Affairs (BIA) and the Department of the Interior.

The notice indicated M.S. may be eligible for membership in the Chiricahua/Fort Sill Apache Tribe of Oklahoma, the Native American Coalition of Texas & Texas Apache Nations, and the Texas Intertribal Enrollment Agencies. However, M.S.'s middle name does not appear on the notice and there is no mention of the TINEA enrollment number under the child's information. The notice indicates paternal grandmother is a member of the "Chiricahua/Fort Sill Apache Tribe of Oklahoma" and lists her tribal membership or enrollment number as "002471," without indicating the number is a TINEA enrollment number.

In a letter dated May 5, 2011, the Fort Sill Apache Tribe indicated M.S. was not eligible for membership. The letter stated the Fort Sill Apache Tribe is not the only federally recognized Apache Tribe and listed contact information for seven other Apache tribes, namely, the Tonto Apache Tribe, the White Mountain Apache Tribe, the San

¹ In its letter brief, the Department indicates the Apache Chiricahua tribe of El Paso is a federally recognized tribe.

Carlos Apache Tribe, the Jicarilla Apache Tribe, the Yavapai-Apache Community, the Mescalero Apache Tribe and the Apache Tribe of Oklahoma.

In a letter dated May 9, 2011, the BIA indicated the noticed documents were being returned because the Department had “provided an appropriate notice to the tribe or tribes.”

On July 6, 2011, the Department gave notice of the August 4, 2011, pretrial resolution conference on form ICWA-030 to the Chiricahua/Fort Sill Apache Tribe of Oklahoma, the BIA and the Secretary of the Interior.

The record contains no other ICWA notices.

On August 1, 2011, the Department submitted signed return receipts for the May 2011 hearing notices from the Fort Sill Apache Tribe of Oklahoma, the BIA, the Native American Coalition of Texas & Apache Nations and the Secretary of the Interior.

On August 4, 2011, the juvenile court conducted a contested adjudication hearing and continued the matter to September 22, 2011. An addendum report submitted that date indicated mother’s visits were intermittent and foster mother suspected mother was under the influence of drugs during visits. The Department reported mother had been discharged from her drug treatment program.

On September 22, 2011, the juvenile court declared M.S. a dependent child, ordered the child suitably placed and entered disposition orders with respect to mother.

On October 21, 2011, at father’s disposition hearing, the juvenile court found the ICWA did not apply.

DISCUSSION

When the juvenile court knows or has reason to know that a child involved in a dependency proceeding is an Indian child, the ICWA requires notice of the proceedings be given to any federally recognized Indian tribe of which the child might be a member or eligible for membership or to the BIA if the tribal affiliation is unknown. (25 U.S.C. § 1912(a); *In re Robert A.* (2007) 147 Cal.App.4th 982, 988-989.)

ICWA notice must include, among other things, the name, birth date, and birthplace of the Indian child, if known; the name of the Indian tribe in which the child is a member or may be eligible for membership, if known; and all names of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known. (*In re D.W.* (2011) 193 Cal.App.4th 413, 417, citing Welf. & Inst. Code, § 224.2, subd. (a)(5).)

Here, the Department concedes the notice lacked crucial information, especially reference to the TINEA enrollment number as part of M.S.'s personal information. Thus, the notice did not include information necessary for a proper investigation. Also, notice was given to only one Apache tribes. Thus, the matter must be remanded to allow the Department to give proper notice to all the Apache tribes, the BIA and the Secretary of the Interior, and to submit all notices, signed return receipts and any tribal responses to the juvenile court.

Mother also requests reversal of the juvenile court's jurisdictional and dispositional orders pending proper notice. However, where parental rights have not been terminated, there is no need to reverse the juvenile court's orders to effectuate proper ICWA notice. (*In re Damian C.* (2009) 178 Cal.App.4th 192, 199-200; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 187; *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) We therefore affirm the juvenile court's orders but remand for proper ICWA notice. If after proper inquiry and notice, a tribe determines M.S. is an Indian child, the tribe, a parent or M.S. may petition the juvenile court to invalidate any orders that violate the ICWA. (25 U.S.C. § 1914.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed. The matter is remanded to the juvenile court with directions to order the Department to comply with the inquiry and notice provisions of the ICWA, if it has not already done so. After proper notice under the ICWA, if it is determined that M.S. is an Indian child and the ICWA applies to these proceedings, the child, the parents or the tribe may petition the juvenile court to invalidate any orders that violate the ICWA.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.