Filed 3/27/15 In re K.S. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re K.S., a Person Coming Under the Juvenile Court Law.	B258367
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. H.S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK82368)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

H.S. (father) appeals the termination of his parental rights to his son, K.S. Father's sole contention on appeal is that the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq. Father's contention is without merit, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Dependency Proceeding

K.S. (born in April 2009) is the child of father and Monique L. (mother). K.S.'s half-brother, D.L. (born in December 1996), is the child of mother and an unidentified father. This appeal concerns K.S. only.

The family came to the attention of DCFS on May 19, 2010, when Colorado law enforcement informed Los Angeles authorities that the body of a dead child, later identified as father's daughter, G.S., had been found in the crawlspace underneath the parents' former home. DCFS located K.S. and D.L. in Los Angeles, where mother and father had left them with an acquaintance several days earlier. The parents' whereabouts were unknown.

On May 25, 2010, the juvenile court found a prima facie case for detaining K.S. and D.L. and ordered them placed in foster care. Subsequently, the court sustained allegations pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (f), (i), and (j), as follows: (1) Mother and father have a history of engaging in violent physical altercations in D.L.'s presence (a-1, b-4); (b) Mother and father physically abused G.S. by striking her with a belt and fists, leaving marks and bruises (a-2, a-3, b-2, b-5, j-1, j-3); (3) Mother and father made an inappropriate plan for the children's care by leaving them in the care of an unrelated adult (b-1); and (4) Mother and father caused the death of G.S. and buried her body under the family home (b-3, f-1, i-1, j-2). In view of the very serious nature of the allegations of the sustained petition, the court denied mother and father reunification services and ordered that they have no contact with the children.

After the dependency proceedings were initiated, mother and father were arrested and convicted in connection with G.S.'s death. Mother was sentenced to a term of 27 years, with a release date of June 2036, and father was sentenced to a term of 40 years, with a release date of 2049.

The children remained in foster care from 2010 to early 2013. In January 2013, the children were placed with their maternal aunt, Victoria P., in New Jersey.

B. ICWA Issues

On May 24, 2010, the juvenile court instructed DCFS to interview maternal relatives regarding K.S.'s possible Indian ancestry.[1] In August 2010, DCFS said the maternal grandmother had reported possible Indian heritage and said she would speak to other family members about it. A dependency investigator attempted to follow up with the maternal grandmother three different times in July and August 2010, but she did not answer the phone or return the calls. The dependency investigator also attempted to contact maternal aunt Sheila L., but she did not return the call. On August 11, 2010, the court ordered DCFS to "continue to investigate possible Native American heritage on mother's side."

The dependency investigator spoke to the maternal grandmother again in September 2010. Maternal grandmother said she had continued checking with family members but did not have any additional information about her family's Indian heritage. As far as she knew, no family member had resided on a reservation or been an enrolled member of any tribe or band.

On March 26, 2012, DCFS was ordered to contact "Aunt Louis[e] L. re: possible ICWA heritage." On April 26, 2012, maternal great-aunt Louise contacted DCFS and said she did not know if any family member had lived on a reservation or registered with a tribe. She told the children's social worker (CSW) she would contact other family members and phone the CSW with information.

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[1] In this appeal, there is no contention that there was any Native American heritage on father's side of the family.

In early 2014, maternal aunt Victoria P. told a dependency investigator that she believed the family had "Blackfoot Indian" heritage. She said she received this information from her paternal aunt (i.e., the children's maternal great-aunt) Louise, whom she described as the family member with "[t]he most" knowledge of the family's Indian heritage, and she gave the investigator Louise's telephone number. The investigator tried several times to reach Louise, but as of June 25 had not received a return call.

On April 7, 2014, Victoria reported she had not received any additional information about the family's Indian ancestry, but she provided the investigator with all the information of which she was aware. Victoria did not know the name or birth date of the family member with Indian heritage, and she did not know of any family member who had resided on an Indian reservation or registered with a tribe. She agreed to contact Louise to try to get additional information. The investigator contacted Victoria via telephone and email to find out if she had reached Louise or received any additional information regarding the family's Indian ancestry, but as of June 25 she had not learned anything new.

On April 28, 2014, the investigator served ICWA notices with the information provided by Victoria on the Blackfeet Tribe of Montana,[2] the Secretary of the Interior, and the Bureau of Indian Affairs (BIA).

On June 25, 2014, the juvenile court found that it did "not have a reason to know that this is an Indian child, as defined under ICWA, and does not order notice to any tribe or the BIA. Parents are to keep the Department, their Attorney, and the Court aware of any new information relating to possible ICWA status."

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[2] One court has observed that "there is frequently confusion between the Blackfeet tribe, which is federally recognized, and the related Blackfoot tribe which is found in Canada and thus not entitled to notice of dependency proceedings." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1198.)

C. Termination of Parental Rights

Mother's and father's parental rights to K.S. were terminated on June 25, 2014. Father timely appealed from the order terminating his parental rights.

DISCUSSION

Father's sole contention on appeal is that the order terminating his parental rights must be reversed because DCFS failed to comply with ICWA's notice provisions. For the reasons that follow, father's contention is without merit.

A. Legal Standards

"ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes and families by establishing certain minimum federal standards in juvenile dependency cases. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421; *In re Jullian B.* (2000) 82 Cal.App.4th 1337, 1344.) ICWA defines an Indian child as any unmarried person who is under age 18 and is either (1) a member of an Indian tribe, or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4).)

"When a court 'knows or has reason to know that an Indian child is involved' in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child's tribe notice of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); Welf. & Inst. Code, §§ 224.3, subd. (d), 290.1, subd. (f), 290.2, subd. (e), 291, subd. (g), 292, subd. (f), 293, subd. (g), 294, subd. (i), 295, subd. (g), 297, subd. (d); *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 941.) Alternatively, if there is insufficient reason to believe a child is an Indian child, notice need not be given. (*In re O.K.* (2003) 106 Cal.App.4th 152, 157; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 707.)

" 'The circumstances that may provide probable cause for the court to believe the child is an Indian child include, but are not limited to, the following: [¶] (A) A person having an interest in the child . . . informs the court or the county welfare agency . . . or provides information suggesting that the child is an Indian child; [¶] (B) The residence of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or [¶] (C) The child or the child's family has received services or benefits

from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.' (Cal. Rules of Court, former rule 5.664(d)(4); see § 224.3, subd. (b)(2) & (3).) If these or other circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child's possible Indian status. Further inquiry includes interviewing the parents, Indian custodian, extended family members or any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. (§ 224.3, subd. (c).) If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice. (§§ 224.3, subd. (d), 224.2, subd. (a)(5)(A)-(G).)" (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538-1539.)

We review the juvenile court's ICWA findings for substantial evidence. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1530; *In re E.W.* (2009) 170 Cal.App.4th 396, 403-404.)

B. The Information Provided by Mother and the Maternal Relatives Was Not Sufficient to Trigger ICWA's Notice Requirement

Father contends ICWA notice was required in this case because members of mother's family suggested K.S. may have Indian ancestry. He urges: "Only a minimal showing is required to trigger the ICWA notice requirements. [Citation.] If anyone related to the case suggests that a child has Indian ancestry, notice should be given. . . . The Indian status of the child need not be certain to invoke the notice requirement." For the reasons that follow, we do not agree.

Although father is correct that a child's Indian status need not be certain to trigger ICWA's notice requirements, a vague suggestion of Indian ancestry, without more, is not sufficient. In *In re Hunter W.* (2011) 200 Cal.App.4th 1454, for example, the mother of a dependent child signed an ICWA-030 form indicating that she might have Indian ancestry through her father and deceased paternal grandmother. Mother provided her father's and paternal grandmother's names, but said she did not have her father's contact information. (*Id.* at p. 1467.) The Court of Appeal held that on that record, reversal on

ICWA grounds was not required. It explained that although mother indicated she might have Indian heritage through her father and deceased paternal grandmother, she "could not identify the particular tribe or nation and did not know of any relative who was a member of a tribe. She did not provide contact information for her father and did not mention any other relative who could reveal more information." (*Id*. at p. 1468.) Accordingly, the court held mother's information was "too speculative" to trigger ICWA. (*Ibid*.)

The court similarly concluded in *In re J.D.* (2010) 189 Cal.App.4th 118. There, the paternal grandmother told DCFS that she had been informed by her own grandmother that she had Indian ancestry. The maternal grandmother did not know whether such ancestry was through her maternal grandmother or grandfather, did not know what tribe such ancestor might have been a member of, and had no living relatives who could provide additional information. (*Id*. at p. 123.) The juvenile court found it had no reason to know the child would fall under ICWA, a conclusion with which the Court of Appeal agreed: "Here, the children's paternal grandmother had told the Department that 'I can't say what tribe it is and I don't have any living relatives to provide any additional information. I was a little kid when my grandmother told me about our Native American ancestry but I just don't know which tribe it was.' This information is too vague, attenuated and speculative to give the dependency court any reason to believe the children might be Indian children." (*Id*. at p. 125.)

In the present case, as in *In re Hunter W.* and *In re J.D.*, the information provided by mother and her family was too uncertain to require ICWA notice. Although several family members suggested K.S. might have Indian heritage, no one was able to identify a federally-recognized tribe in which he might be entitled to membership. The maternal grandmother and great-aunt both said they did not know the name of the tribe to which an ancestor may have belonged. Although maternal aunt Victoria said she believed the family had "Blackfoot Indian" heritage, the "Blackfoot tribe" is a Canadian tribe that is not federally recognized. (*In re L.S.*, *supra*, 230 Cal.App.4th at p. 1198.) Accordingly, as in *In re Hunter W.* and *In re J.D.*, the information provided by mother's family was

"too vague, attenuated and speculative" to give the juvenile court reason to believe K.S. was an Indian child.

Dwayne P. v. Superior Court (2002) 103 Cal.App.4th 247, on which father relies for the proposition that a "minimal showing" is sufficient to trigger ICWA notice requirements, is distinguishable. In that case, father indicated he might have Cherokee Indian heritage, and mother's counsel said mother " 'indicate[d] that she [has] some Cherokee American Indian heritage." (*Id*. at p. 252.) Accordingly, the Court of Appeal held that notice should have been given to the three Cherokee entities listed in the Federal Register, and that the juvenile court's failure to secure compliance with ICWA's notice provisions was prejudicial error. (*Id*. at pp. 257 & fn. 6, 258.) In the present case, in contrast, no family member was able to identify a federally-recognized tribe to which K.S. may have been eligible for membership, and which should have received ICWA notice.[3]

C. DCFS Adequately Investigated K.S.'s Claimed Indian Heritage

Although father has not contended that DCFS conducted an inadequate investigation of K.S.'s possible Indian heritage, we discuss the issue briefly. As we have said, if circumstances indicate that a child may be an Indian child, the social worker must further inquire regarding the child's possible Indian status by interviewing family members or other persons who may have knowledge of the child's eligibility. (*In re Jeremiah G*. (2009) 172 Cal.App.4th 1514, 1520.) Here, DCFS did so. A dependency investigator interviewed the maternal grandmother in August 2010, and then attempted three different times to follow up with her to obtain additional information; on each occasion, maternal grandmother failed to answer the phone or return the investigator's calls. The dependency investigator finally reached maternal grandmother in September 2010, but the grandmother was not able to provide any additional information. The dependency investigator also contacted maternal aunt Sheila L. in August 2010; she too failed to return the call.

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[3] Because we conclude that ICWA notice was not required, we do not consider father's contention that the notice DCFS provided to the Blackfeet tribe was inadequate.

The dependency investigator also contacted maternal great-aunt Louise, reported to be the family member most knowledgeable about the family's history. The two spoke on April 26, 2012, but Louise was not able to provide any detailed information about the family's asserted Indian ancestry. The dependency investigator tried again to reach Louise several times in 2014, but was not successful. Finally, the dependency investigator spoke to maternal aunt Victoria P. sometime prior to June 25, 2013, and then followed up with her several times. Victoria P. agreed to contact Louise to try to get additional information, but as of June 25, she had not received any additional information. On this record, substantial evidence supported the juvenile court's implicit conclusion that DCFS had adequately investigated K.S.'s possible Indian ancestry.

DISPOSITION

The order terminating father's parental rights is affirmed.

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EDMON, P. J.

We concur:

KITCHING, J.

LAVIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.