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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B277304

(Los Angeles County
Super. Ct. No. DK15679)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K. S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Teresa Sullivan, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

The juvenile court asserted jurisdiction over a child born in 2015. The child's father asserts that this was improper because the court did not comply with the requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We conclude that the three errors father points out have either been cured or are irrelevant to the adequacy of the notice ICWA requires. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Zaria V. (mother) has two children—J.T. (born 2012) and Nova S. (born 2015). K.S. (father) is Nova's father.

In December 2015, mother videotaped herself dancing over J.T. while wearing just a g-string and orally copulating him.

The Los Angeles County Department of Children and Family Services (Department) subsequently filed a petition asking the juvenile court to exert dependency jurisdiction over J.T. and Nova. In the operative second amended petition, the Department alleged that (1) mother had physically abused J.T. by striking him with a stick and burning him with cigarettes (which justified dependency jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) and (b));¹ (2) mother had sexually abused J.T., thereby placing J.T. and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Nova at substantial risk of suffering serious physical harm (which justified dependency jurisdiction under section 300, subdivisions (b), (d), and (j)); (3) mother has a history of substance abuse (which justified dependency jurisdiction under section 300, subdivision (b)); and (4) father has a history of criminal arrests and convictions (which justified dependency jurisdiction under section 300, subdivision (b)).²

Mother reported that Nova's maternal grandfather "may be affiliated with the Cherokee Tribe in Texas," and a few days later recommended that the Department contact Nova's maternal great-grandmother for more information about her Indian heritage. The Department did so, and learned that any Indian heritage came from the maternal great, great-grandmother, but that maternal great-grandmother did not know if that relative had ever registered with any tribe. Father reported no Indian heritage. In April 2016, the Department sent a Notice of Child Custody Proceeding for Indian Child (Notice) regarding Nova to the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians in Oklahoma, the Bureau of Indian Affairs, and the United States Department of the Interior. The Notice listed Nova's maternal great-grandmother's name and current address, but did not contain any information about the maternal great, great-grandmother (because the form did not contain a space for that information) and listed no information about father's relatives

² The Department also alleged that father had a history of substance abuse and that J.T.'s father had a history of violent altercations. The juvenile court did not sustain the additional allegation against father, and J.T.'s father has not appealed.

except father's mother's name. The Department filed the Notice and unsigned certified mail receipts with the juvenile court.

In early May 2016, the Cherokee Nation tribe reported that a search of its records found that Nova was "NOT an 'Indian child[]' in relation to the Cherokee Nation."

In June 2016, the juvenile court exerted dependency jurisdiction over Nova, removed Nova from both parents (as father was still incarcerated), and ordered reunification services for father (but not mother).

Father filed this timely appeal.

After father filed his notice of appeal, the Department in August 2017, filed with the juvenile court the signed return receipts that accompanied the Notice mailed in April 2016, and the juvenile court in September 2017, found that ICWA did not apply.³

DISCUSSION

Under ICWA and the statutes our Legislature enacted to implement it (§§ 224-224.6), a juvenile court has (1) a duty to investigate whether a child is an "Indian child" and, if the court "knows or has reason to know" that he or she is, (2) a duty to notify the child's parent and either the Indian child's tribe or, if the tribe is unknown, the Secretary of the Interior and the Bureau of Indian Affairs. (25 U.S.C. § 1912(a); see also 25 U.S.C. § 1903(11); §§ 224.2, subd. (a)(4) & 224.3, subds. (a), (c), & (d); Cal. Rules of Court, rule 5.481(a).) The tribe then decides whether the child is, in fact, an "Indian child"—that is, a child who (1) is "a member of an Indian tribe," or (2) "is eligible for

³ We took judicial notice of these documents. (Evid. Code, §§ 452, subd. (c) & 459.)

membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. § 1903(4); §§ 224.1, subd. (a) & 224.3, subd. (e)(1); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.) The notice sent to the tribes and/or federal agencies must be “sent by registered or certified mail with return receipt requested” (§ 224.2, subd. (a)(1)), and must contain, among other things, “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians . . . , as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known” (§ 224.2, subd. (a)(5)(C)). “[C]opies of notices sent and all return receipts and responses received” must thereafter “be filed with the court” (§ 224.2, subd. (c); Cal. Rules of Court, rule 5.482(b)), and the juvenile court must give the tribes at least 60 days to respond to the notice (*In re O.C.* (2016) 5 Cal.App.5th 1173, 1188). We independently review whether ICWA’s requirements have been met. (*In re J.L.* (2017) 10 Cal.App.5th 913, 917-918.)

Father argues that the juvenile court did not comply with these mandates in three respects: (1) the Department only filed with the juvenile court the *unsigned* return receipts, not the *signed* return receipts; (2) the juvenile court made its finding that Nova was not an Indian child fewer than 60 days after the notices were mailed; and (3) the notices did not contain any information about *father’s* relatives beyond his mother’s name. None of these omissions warrants reversal.⁴

⁴ Father has standing to raise these arguments, even though any Indian heritage comes from mother (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339) and even though father did not object

Father's first two arguments do not warrant reversal because, subsequent to this appeal, the Department filed the signed return receipts with the juvenile court, and the juvenile court made a new determination that ICWA did not apply and did so more than 60 days after the notices were sent. This cures the prior procedural deficiencies and negates any prejudice from those complained-of deficiencies. (*In re Z.N.* (2009) 181 Cal.App.4th 282, 298-299 & fn. 4.)

Father's final argument also does not warrant reversal. We need not overturn an ICWA finding when the claimed deficiency in ICWA compliance was harmless. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 652-653.) Any failure by the Department in not including in the Notice the biographical information regarding father's relatives was harmless because the only parent to claim any Indian heritage was mother; omitting details about father's relatives, when father disclaimed any Indian heritage, was of no consequence to the tribes' or federal agencies' determination of whether Nova was an Indian child.

before the juvenile court (*In re Z.W.* (2011) 194 Cal.App.4th 54, 63).

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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