

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

In re T.H., IV., et al., Persons  
Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.H. III,

Defendant and Appellant.

B278810

(Los Angeles County  
Super. Ct. No. DK19080)

APPEAL from an order of the Superior Court of Los Angeles County, Amy J. Pellman, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

## **INTRODUCTION**

Father appeals from the juvenile court's jurisdiction and disposition orders, arguing that the Indian Child Welfare Act's (ICWA) inquiry and notice provisions were not satisfied. Father does not challenge any other aspect of the jurisdictional findings or disposition order. We affirm because ICWA notice requirements were not triggered by these dependency proceedings, where the children remained in mother's care.

## **FACTS AND PROCEDURAL BACKGROUND**

The parents have a son and a daughter. In August 2016, father committed domestic violence against mother in front of the children and was arrested. DCFS took protective custody of the children and then released them to mother.

On September 6, 2016, DCFS filed a Welfare and Institutions Code, section 300 petition, the court held the detention hearing, and the parents submitted ICWA forms. DCFS alleged jurisdiction over the children based on domestic violence between the parents and father's abuse of the son. In the ICWA-020 forms, mother claimed no Indian ancestry and father stated he may have Indian ancestry in the "Penoscot" or "Pennobscot" tribe. Father identified his great-great grandmother by name as the possible tribe member.

At the detention hearing, the court detained the children in mother's custody and found that ICWA may be applicable to father. The court ordered DCFS to notice the Bureau of Indian Affairs and the identified tribes and to submit the notice at the next hearing. DCFS subsequently submitted a report attaching ICWA notices that were sent to the Bureau of Indian Affairs, Secretary of the Interior, and parents. The notices contained father's name and address but did not list a tribe or father's relatives.

On October 25, 2016, the juvenile court sustained the domestic violence and physical abuse allegations and found jurisdiction over the children. The court ordered the children removed from father's custody and placed with mother, and for the parents to receive reunification services. The court found it did not have reason to know the children were defined by ICWA and ordered the parents to keep DCFS, their counsel, and the court aware of any new information relating to possible ICWA status. Father timely appealed.

### **DISCUSSION**

Father solely appeals the juvenile court's ICWA finding. Father argues that the juvenile court and DCFS failed to comply with ICWA because DCFS never sent ICWA notices to the Penobscot tribe and the prepared notices did not identify the paternal great-great grandmother.

We conclude that father's arguments lack merit because the circumstances of this case have not as yet triggered ICWA notice requirements. ICWA states: "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 the 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, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912 (*italics added*)). Foster care placement is defined as "removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated." (25 U.S.C. § 1903(1)(i).)

Reviewing these provisions, this Court has previously explained that ICWA “requires notice only when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding.” (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 14.) The obvious objectives of ICWA support this plain meaning interpretation. “When authorities remove a child of Native American descent from his home, [ICWA] promotes foster care or adoption by a Native American family in the hope of preserving tribal culture. If, however, authorities do not move the child to another family, the purpose does not come into play.” (*In re Alexis H., supra*, 132 Cal.App.4th at p. 15.)

Here, the children were never removed from mother’s care. When DCFS initially took the children into protective custody, they were released to mother. The juvenile court then ordered the children released to mother’s custody at the detention hearing. DCFS recommended they remain in mother’s custody throughout the case. At the jurisdiction and disposition hearing, the court ordered the children remain in mother’s custody, consistent with DCFS’s recommendation. Because DCFS did not seek and the court did not order the children to be placed in foster care or termination of parental rights, ICWA did not apply to these proceedings.

Father argues that pursuant to Title 25 of the Code of Federal Regulations section 23.103, ICWA applies to this case because that regulation states generally that ICWA applies in an “involuntary proceeding.” Yet, in making this argument, father ignores the related federal regulations that flesh out how ICWA functions. Title 25 of the Code of Federal Regulations section 23.11 explicitly addresses when ICWA notice requirements are invoked and requires notice only when the state seeks foster care

placement or termination of parental rights. It is clear from the statutory scheme as well as our case law that ICWA notice requirements do not apply at this stage of the proceedings, where the child remains in the custody of one of the parents. (See *In re M.R.* (2017) 7 Cal.App.5th 886, 904 [“ICWA and its attendant notice requirements do not apply to a proceeding in which a dependent child is removed from one parent and placed with another.”].)

### **DISPOSITION**

We affirm the juvenile court orders.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J.

SORTINO, J.\*

---

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