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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.M., a Person Coming Under the Juvenile Court Law.	B294411
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.H. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. DK16887A)

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Commissioner. Conditionally reversed, and remanded with directions.

Donna B. Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant Mother K.H.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant Father T.M.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Mother and father appeal from an order terminating their parental rights to three-year-old K.M. The parents' only contention on appeal is that the court erred in finding that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) did not apply. We conditionally reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2016, the Department of Children and Family Services (Department) began an investigation of K.M. when mother drove her car into one of her roommates. Mother was arrested for assault with a deadly weapon, and K.M., who was eight months old, was taken into protective custody. Father's whereabouts were unknown.

The Department filed a petition under Welfare and Institutions Code section 300 alleging that mother had failed to make an appropriate plan for K.M.'s care and supervision while she was incarcerated, and had placed K.M. in a detrimental home environment by allowing drug dealers to reside with her.[1] The trial court detained K.M. from mother and ordered the Department to perform a due diligence search to locate father.

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[1] All further statutory references are to the Welfare and Institutions Code.

Mother denied Indian ancestry and the juvenile court found that ICWA did not apply to mother.

Father contacted the Department in June 2016. He was located in Florida where he had been extradited on sexual battery charges. The Department amended the section 300 petition to allege that father's history of sexual battery and substance abuse posed a risk to K.M. Father told the Department he "might have Cherokee" ancestry through his deceased grandmother, Lizzie Woodall. "Father reported there is no other family member who can provide this information."

In September 2016, the juvenile court sustained the amended petition as to mother, removed K.M. from her custody, and ordered reunification services. In February 2017, the court dismissed the petition's allegations against father. The court further found that ICWA did not apply to father. The following month, the court found that father was not seeking custody of K.M.

In February 2018, the court terminated reunification services. At the section 366.26 hearing held nine months later, father filed an ICWA-020 form again stating that he might have Cherokee Indian ancestry. The issue of ICWA was not raised at the hearing. The court terminated parental rights and ordered, as the permanent plan, the adoption of K.M. by his caretaker of more than two years. Mother and father timely appealed.

DISCUSSION

Mother and father's sole argument on appeal is that the trial court erred in finding that ICWA did not apply as to father. They contend that once father named a relative who might have Cherokee heritage, the Department should have provided notice of the case to the Cherokee tribes. We agree.

ICWA requires notice to Native American tribes "in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court [or social worker] knows or has reason to know that an Indian child is involved.' " (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) "An 'Indian child' is defined by the ICWA as 'any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.' (25 U.S.C. § 1903(4).)" (*In re O.K.* (2003) 106 Cal.App.4th 152, 155-156.) " '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].' [Citation.]" (*In re B.H.* (2015) 241 Cal.App.4th 603, 606.)

Here, the question is whether the juvenile court knew or had reason to believe that K.M. was an "Indian child" under ICWA such that notice should have been given to the Cherokee tribes. We conclude that father's statements triggered ICWA notice requirements. Even the Department cites to a case providing that a parent's report of ancestry through a named relative and particular nation or tribe is sufficient to trigger

ICWA notice requirements. (*In re B.H.*, *supra*, 241 Cal.App.4th at p. 607; see also *In re Damian C.* (2009) 178 Cal.App.4th 192, 193 [notice required where father identified both the tribe and the relative who may have had Native American heritage].)

Although the Department urges us to follow other case law where courts have held a parent's vague claims of Indian heritage too speculative for ICWA to apply, those cases are not on point. In *In re Hunter W.* (2011) 200 Cal.App.4th 1454, for example, the court found that ICWA did not apply when a parent reported only that she had Indian heritage through her father and paternal grandmother. (*Id.* at p. 1469.) In contrast to the present case, the parent in *Hunter* could not identify a particular tribe or nation. (*Id.* at pp. 1468-1469.) In neither of the other cases cited by the Department (*In re J.L.* (2017) 10 Cal.App.5th 913 and *In re J.D.* (2010) 189 Cal.App.4th 118), did the parent know both the tribe and the relative though whom Indian heritage passed. In contrast, the father here provided the name of a relative with potential Indian ancestry (Lizzie Woodall) and the name of a tribal nation (Cherokee).

Under these circumstances, the Department was required to comply with ICWA notice requirements. We are sympathetic towards the potential adoptive parent who faces another delay in the adoption proceedings, this time for an application of a mandatory statute that may ultimately not change a thing. We have no doubt that the Department and the juvenile court will approach this task with dispatch.

DISPOSITION

The judgment terminating parental rights regarding K.M. is conditionally reversed, and the case is remanded to the juvenile court with directions to order the Department to comply with the notice provisions of ICWA without further delay. If, after proper notice, no tribe claims that K.M. is an Indian child, the juvenile court shall reinstate the judgment terminating parental rights.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.