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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

In re E.B., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.B.,

Defendant and Appellant.

B296088

(Los Angeles County
Super. Ct. No. DK17753A)

APPEAL from an order of the Superior Court of Los Angeles County, Steph R. Padilla, Juvenile Court Referee. Conditionally affirmed and remanded with directions.

Lelah Fisher, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Mother F.B. appeals the juvenile court's order terminating her parental rights to her son, E.B. Her only contention on appeal is that the Los Angeles County Department of Children and Family Services (Department) failed to comply with its inquiry and notice obligations under the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.). The Department concedes the error, and does not oppose a limited remand. We therefore conditionally affirm the order terminating mother's parental rights, and remand with directions regarding ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

Given the narrow scope of this appeal, we limit our summary to those facts relevant to ICWA.

E.B. came to the attention of the Department after the Department received a referral that mother was physically abusing him. On June 29, 2016, mother filed a parental notification of Indian status form stating that maternal grandfather has Cherokee ancestry. At the June 29, 2016 detention hearing, mother also represented that her mother "was a full blood Indian," and maternal grandmother told the court that "there may be" Indian heritage. The Court ordered the Department to interview maternal grandmother "and send ICWA notice as appropriate."

The Department interviewed maternal grandmother, who reported that maternal great-grandmother O.C.B.K., had possible Cherokee and Blackfeet heritage. There is no indication in the record that she was asked about maternal grandfather's possible Indian heritage.

There is no evidence in the record that the Department ever attempted to contact maternal grandfather, or ask other maternal relatives (such as mother, maternal grandmother, or

maternal uncle) whether they had any information about maternal grandfather's possible Indian heritage. The Department was in contact with maternal uncle B.B., who was in regular contact with maternal grandfather. But it appears he was never asked about the family's possible Indian ancestry.

Notices were sent to the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians, the Blackfeet Tribe of Montana, the Bureau of Indian Affairs, and the Secretary of the Interior. There is no indication in the record that notice was sent to the other federally recognized Cherokee tribe, the Cherokee Nation. Moreover, the address noted for the Blackfeet tribe contained a typographical error. The certified mail receipt indicates the notice was sent to *Drowning*, Montana instead of *Browning*, Montana. The notices did not include any information about maternal grandfather.

The Keetoowah Band of Cherokee Indians responded that E.B. is not an Indian child. No other responses were received.

At a September 7, 2016 progress hearing, the court found it had no reason to know that E.B. is an Indian child. At subsequent hearings in July 2018 and January 2019, the court found that ICWA did not apply. On January 8, 2019, the court terminated mother's parental rights. Mother timely appealed.

DISCUSSION

Congress enacted ICWA “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) ICWA requires notice to Indian tribes “in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights ‘where the court knows or has reason to know that an Indian child is involved.’” (*In re Isaiah W.*, at

p. 8.) The child’s tribe must receive “notice of the pending proceedings and its right to intervene.” (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

“ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry; nor do the controlling federal regulations. . . . But ICWA provides that states may provide ‘a higher standard of protection to the rights of the parent . . . of an Indian child than the rights provided under [ICWA]’ . . . , and long-standing federal guidelines provide ‘the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.’” (*In re H.B.*, *supra*, 161 Cal.App.4th at pp. 120-121, fns. & citations omitted.)

Under state law, Welfare and Institutions Code, former section 224.3¹ imposes on the juvenile court and the Department “an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child” (§ 224.2, subd. (a).) If there is “reason to believe that an Indian Child is involved in a proceeding” further inquiry regarding the possible Indian status of the child “shall” be made, including “[i]nterviewing . . . extended family members” to obtain the necessary information to notice the tribes. (*Id.*, subd. (e)(1).) Similarly, the California Rules of Court impose on the court and Department “an affirmative and continuing duty to inquire whether a child is or may be an Indian child” (Cal. Rules of Court, rule 5.481(a).)

¹ The substantive provisions of Welfare and Institutions Code, former section 224.3 have been renumbered as section 224.2, effective January 1, 2019, pursuant to Statutes 2018, chapter 833, sections 5 and 7.

Notices to the tribes must contain sufficient information to allow the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705.) Welfare and Institutions Code, former section 224.2² requires the notices to include "[a]ll names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great-grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information." (§ 224.3, subd. (a)(5)(C).)

The Department concedes it was error to not send notice to the Cherokee Nation. The Department also concedes that it was error to not inquire of maternal grandfather's possible Indian ancestry. Therefore, respondent agrees that a limited remand is appropriate, "with directions to order the Department to further inquire of the Mother, maternal grandfather, and any available maternal relatives regarding possible Indian heritage and provide proper notice to the appropriate entities."

We acknowledge that mother has not made any showing, in her briefs or otherwise, that maternal relatives actually have any useful information about E.B.'s possible Indian ancestry. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) Nevertheless, to the extent that mother is acting as a surrogate for the tribes, to

² The substantive provisions of Welfare and Institutions Code, former section 224.2 have been renumbered as section 224.3, effective January 1, 2019, pursuant to Statutes 2018, chapter 833, sections 4 and 7.

achieve the purpose of providing notice sufficient to allow the tribes to determine whether E.B. is an Indian child, we will remand with instructions that the Department comply with its duty to inquire of maternal grandmother, maternal grandfather, and maternal uncle (as well as any other available maternal relatives) if they have any additional information about E.B.'s possible Indian heritage, and to comply with any resulting duty to provide notice to the tribes. (See, e.g., *In re N.G.* (2018) 27 Cal.App.5th 474, 484.)

DISPOSITION

The order terminating parental rights is conditionally affirmed. The matter is remanded to the juvenile court with directions to comply with the inquiry provisions of Welfare and Institutions Code section 224.2 and California Rules of Court, rule 5.481 by ordering the Department to make inquiry of maternal relatives concerning the possible Indian ancestry of maternal grandfather; and if, as a result of that inquiry, there is additional reportable information indicating E.B. may be an Indian child, to comply with the notice provisions of ICWA (Welf. & Inst. Code, § 224.3 & Cal. Rules of Court, rule 5.481). Even if no additional reportable information is obtained, the court is directed to order the Department to send notice to the Cherokee Nation and to send another notice with the correct address to the Blackfeet Tribe of Montana. If the inquiry reveals no additional reportable information nor any reason to believe E.B. is an Indian child, or if maternal relatives do not respond promptly to the Department's diligent efforts to obtain such information, and if the Cherokee Nation and Blackfeet Tribe do not respond that E.B. is an Indian child, then the order terminating parental rights will be reinstated.

The remittitur shall issue forthwith.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.