Filed 4/11/13 In re C.T. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re C.T., a Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.C., Defendant and Appellant.	B245106 (Los Angeles County Super. Ct. No. CK74348)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

A.C. (mother) appeals an order terminating her parental rights with respect to now two-year-old C.T. Mother contends the order must be reversed because the investigation by the Department of Children and Family Services (the Department) into her American Indian heritage was insufficient and notices should have been given under the Indian Child Welfare Act (ICWA). We reject mother's contention and affirm the order terminating parental rights.

FACTS AND PROCEDURAL BACKGROUND

C.T. came to the attention of the Department of Children and Family Services (the Department) in March of 2011, when the child and mother tested positive for cocaine at the child's birth. The Department filed a petition alleging C.T. was a dependent child within the meaning of Welfare and Institutions Code section 300, subdivision (b)[1] based, inter alia, on mother's failure to reunify with C.T.'s sibling, T.W., who was receiving permanent placement services due to mother's substance abuse. The detention report indicated maternal aunt had adopted T.W. in 2010, and was willing to care for C.T.

Mother did not appear at the detention hearing. Maternal aunt appeared and, in response to the juvenile court's questions, indicated the family had no American Indian heritage. The juvenile court ordered C.T. placed with maternal aunt and found no reason to believe C.T. was a child described by the ICWA.

The jurisdiction hearing was continued several times for completion of due diligence searches for mother and father. On May 27, 2011, the juvenile court sustained the petition, denied mother family reunification services and set the matter for a permanency planning hearing on September 23, 2011.

On September 23, 2011, the juvenile court commenced the permanency planning hearing but continued the matter for approval of maternal aunt's home study. The juvenile court noted the parents had not appeared and found it had no reason to know the child was covered by the ICWA.

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[1] Subsequent unspecified statutory references are to the Welfare and Institutions Code.

Maternal aunt's home study was approved on April 25, 2012.

A social report filed June 12, 2012, indicated maternal aunt stated mother and father had visited C.T. three to four times during the child's life for 15 to 20 minutes each visit. The report indicated C.T. "appears to be doing very well in the loving, stable home of her prospective adoptive parent." The report also noted mother contacted the social worker on May 31, 2012, to indicate she was incarcerated.

The juvenile court continued the permanency planning hearing to allow mother to attend. On July 24, 2012, mother appeared in court and completed an ICWA-020 Judicial Council Form, Parental Notification of Indian Status, indicating she may have Cherokee heritage through her maternal great grandmother, I.W. The juvenile court asked mother the basis of her belief. Mother replied, "My grandmother on my dad's side is black and Cherokee Indian." When asked why mother had this belief, mother responded, "Because it's always been addressed in my family." Mother indicated she was not registered with any tribe and was not certain if her father or her father's mother were registered. The juvenile court found it had no reason to know the ICWA applied but ordered the Department to contact mother to obtain specific information regarding her relatives, to investigate and to provide a report on the possible application of the ICWA.

A report filed August 21, 2012, indicated the social worker left a telephone message for paternal aunt, P.W., indicating the social worker wished to discuss the family's Native American heritage but P.W. failed to respond. On August 20, 2012, the social worker contacted maternal grandmother, M.C., who provided the telephone number of paternal grandfather, R.W. The social worker telephoned R.W. who indicated he had no Native American heritage. R.W. stated: "I never attended an[] Indian school, [or] live[d] on a reservation, and I do not receive any money from an Indian Tribe. No one in my family is Indian. I am not a member of any Indian Tribe. I am a black man and the only Tribe that I am from is [in] Africa."

At the continued permanency planning hearing on August 21, 2012, the juvenile court reiterated R.W.'s statement the family has no American Indian heritage and asked if mother had any additional information. After mother indicated R.W. was her father, not her grandfather, the juvenile court asked: "So is he the one that would have more information on the possible American Indian heritage, ma'am?" Mother responded affirmatively and indicated, "It's his mother who, actually, that I'm aware of, is Cherokee Indian and black." The juvenile court noted R.W. denied Indian heritage and found there was no reason to know C.T. came within the ICWA.

The juvenile court then conducted a contested section 366.26 hearing at which mother testified. After the parties argued the matter, the juvenile court terminated parental rights and designated maternal aunt C.T.'s prospective adoptive parent.

CONTENTIONS

Mother contends the order terminating her parental rights must be reversed because the investigation into her Cherokee heritage was insufficient and ICWA notices should have been sent.

DISCUSSION

1. *Relevant law.*

"Congress enacted ICWA in 1978 to protect Indian children and their tribes from the erosion of tribal ties and cultural heritage and to preserve future Indian generations. [Citations.] Because ' "the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents" ' [citation], a tribe has the right to intervene in a state court dependency proceeding at any time [citation]." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.)

If the juvenile court or the social worker "knows or has reason to know that an Indian child is involved," the social worker must "make further inquiry regarding the possible Indian status of the child . . . by interviewing the parents . . . and extended family members . . . and contacting . . . any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (§ 224.3, subd. (c); see also Cal. Rules of Court, rule 5.481(a)(4).)

Section 224.3, subdivision (b) provides in pertinent part: "The circumstances that may provide reason to know the child is an Indian child include, but are not limited to, the following: [¶] (1) A person having an interest in the child, including . . . a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe . . . ." (§ 224.3, subd. (b)(1); Cal. Rules of Court, rule 5.481(a)(5)(A).) The duty under the ICWA to inquire whether a dependent child is or may be an Indian child is affirmative and continuing. (§ 224.3, subd. (a).)

When a juvenile court "knows or has reason to know that an Indian child is involved" in a dependency case, it must give the child's tribe notice of the proceedings and its right to intervene. (25 U.S.C. § 1912(a); §§ 224.2, subd. (a), 224.3, subd. (d); Cal. Rules of Court, rule 5.481(b); see also *In re Damian C.* (2009) 178 Cal.App.4th 192, 196.) " 'If the identity or location of . . . the tribe cannot be determined,' the notice need only be given to the BIA [Bureau of Indian Affairs]." (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1157, quoting 25 U.S.C. § 1912(a).)

"The determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement. [Citations.]" (*In re Nikki R., supra,* 106 Cal.App.4th at p. 848; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 246; *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 256-258.) "A hint may suffice for this minimal showing." (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 549.)

Challenges to the adequacy of a juvenile court's finding the ICWA does not apply are governed by the substantial evidence standard of review. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1430 [substantial evidence review of whether duty to inquire into possible Indian heritage was satisfied]; *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 941-943 [record contained sufficient evidence that a proper inquiry was made regarding whether child was an Indian child].)

2. *The Department and the juvenile court inquired sufficiently.*

Mother contends the inquiry performed by the Department was inadequate because the social worker did not contact I.W., the family member mother described as having Cherokee heritage, or other paternal relatives, failed to explain P.W.'s relationship to mother's paternal grandmother, and failed to gather as much information as reasonably possible in order to complete and serve the Notice of Child Custody proceeding for an Indian Child (Judicial Counsel Form JV-ICWA-030). (Cal Rules of Court, rule 5.481(a)(4).) Mother asserts the social worker should have corroborated R.W.'s statement by interviewing other paternal relatives or any other person who could reasonably be expected to have information concerning C.T.'s membership status. (*In re Shane G.*, (2008) 166 Cal.App.4th 1532, 1539.)

Mother's arguments are unavailing. Based on mother's assertion she thought C.T. might have Cherokee heritage through I.W., the juvenile court ordered the Department to investigate and report. The Department made inquiries, interviewed relatives and filed a report. The juvenile court read the report and questioned mother directly about the results of the investigation. Mother confirmed R.W., who adamantly denied American Indian heritage, would be the family repository of such information. Thus, the investigation had uncovered no reason to know C.T. was an Indian child within the meaning of the ICWA.

Mother argues the juvenile court was confused at the hearing because it stated the Department had spoken to "mother's grandfather." However, mother clarified R.W. was her father, not her grandfather, and it was R.W.'s mother who had Cherokee ancestry. Thus, the juvenile court was not confused with respect to R.W.'s relationship to mother or I.W.

Based on the record presented, the juvenile court reasonably could conclude the duty to inquire had been satisfied and there was no reason to know C.T. was an Indian child as described by the ICWA. (*In re Rebecca R., supra,* 143 Cal.App.4th at p. 1430; *In re Aaliyah G., supra,* 109 Cal.App.4th at pp. 941-943.)

DISPOSITION

The order terminating parental rights is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.