Filed 9/29/16 B.A. v. Superior Court CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B.A., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	B265793 (Los Angeles County Super. Ct. No. CK88101)
In re S.J., a Person Coming Under the Juvenile Court Law.	B269203 (Los Angeles County Super. Ct. No. CK88101)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Appellant, v.	

B.A.,

Defendant and Appellant;

J.J.,

Defendant and Respondent;

S.J.,

Respondent.

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Debra L. Losnick, Commissioner. Petition denied.

APPEAL from an order of the Superior Court of Los Angeles County, Debra L. Losnick, Commissioner. Affirmed.

Joanne D. Willis Newton, under appointment by the Court of Appeal, for Petitioner and Appellant B.A.

No appearance for Respondent Superior Court of Los Angeles County.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Real Party in Interest, Plaintiff and Appellant Los Angeles County Department of Children and Family Services.

Patti L. Dikes, under appointment by the Court of Appeal, for Real Party in Interest, Defendant and Respondent J.J.

Christopher Blake, under appointment by the Court of Appeal, for Minor.

This Welfare and Institutions Code[1] section 300 dependency proceeding is before us for the second time. B.A. (mother) and Los Angeles County Department of Children

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

and Family Services (DCFS) appeal from the juvenile court's order finding good cause to deviate from the placement preferences under the Indian Child Welfare Act (ICWA), title 25 United States Code section 1915 and Welfare and Institutions Code section 361.31. The order permits five-year-old S.J. to remain in a non-Indian licensed foster home where S.J. has been residing since she was six months old, per mother's request at the time in Los Angeles rather than the Indian relative home of S.J.'s maternal great uncle (great uncle), and his wife in Saskatchewan, Canada, or the Indian relative home of maternal grandfather (grandfather) of S.J., in Los Angeles (in whose Los Angeles home the father J.J. (father), mother, and S.J. had resided at the time of the child abuse and neglect).

Mother also filed a petition for extraordinary writ arguing that the juvenile court should not have terminated reunification services. We consolidated the two proceedings for the purposes of appeal and disposition.

We deny the petition for extraordinary writ (B265793) because we conclude that substantial evidence presented at the section 366.22 hearing supported (1) the juvenile court's finding that return of the child to the custody of mother would create "a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child" (§ 366.22, subd. (a)(1)) and (2) the juvenile court's finding that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." (25 U.S.C. § 1912(d); § 361.7, subd. (a).)

In the appeal (B269203), we conclude that substantial evidence presented at the good cause hearing supported the juvenile court's finding of good cause to deviate from the placement preferences under ICWA and therefore affirm.

BACKGROUND

I. Prior appeal (B253138)

On July 25, 2014, we issued our opinion reversing the juvenile court's orders that terminated reunification services, terminated the parental rights of mother and father, made a finding of good cause to deviate from the placement preferences under ICWA,

and placed S.J. with the foster family. (*In re S.J.* (July 25, 2014, B253138) [nonpub. opn.].) We concluded that the juvenile court and DCFS had failed to perform their ongoing duty to inquire whether S.J. was a member of or eligible for membership in additional federally-recognized tribes and to comply fully with ICWA's requirements to provide proper notice to the appropriate tribe or tribes, if any. We directed the juvenile court to hold a new section 366.22 hearing in conformity with ICWA and to order DCFS to conduct a new assessment of grandfather as a potential placement option for S.J.

Because our prior opinion thoroughly detailed the facts giving rise to this dependency proceeding, we do not reiterate the background here and instead focus on the events following remand that are directly relevant to the issues on appeal.

II. Postremand proceedings

A. Events leading up to the section 366.22 hearing

During the pendency of the appeal, S.J. remained under the care of the foster parents and DCFS reported that S.J. "appears to be thriving under their care." The foster parents continued to provide the child with weekly physical therapy, weekly medical appointments, and weekly behavioral therapy. DCFS reported that S.J. had made substantial progress in her physical and cognitive development. In January 2014, S.J. demonstrated sufficient emotional stability to be discharged from therapy.

Although the juvenile court had terminated parental rights, the foster parents permitted mother and father to have monthly visitations with S.J. In June 2014, mother moved to Canada and ended any visitation or contact with S.J. or the foster parents. Father continued to visit S.J. regularly; however, without father's permission, grandfather attempted to attend S.J.'s visitations with father. Mother and grandfather did not contact DCFS about arranging visitations with S.J. or inquiring about the dependency proceeding.

After remand, DCFS attempted to contact mother, who was living in Canada, but was unable to do so until November 2014. DCFS began facilitating visitations between mother and S.J. when mother visited Los Angeles (for example, during the holidays), Skype sessions while mother was in Canada, and visitations between grandfather and S.J.

in Los Angeles. Because S.J. was reacting poorly to the visitations and/or exposure to discussions regarding upcoming court proceedings that concerned her future placement, she began receiving therapy from Alejandra Trujillo (Trujillo), employed at a DCFS-approved mental health center.

In February 2015, DCFS approved grandfather's home as a placement (the same studio apartment where the initial child abuse occurred) but the Osage Nation opposed placing S.J. in his custody. The Osage Nation had concerns because of grandfather's role in the initial abuse and that grandfather "still takes no shared responsibility for [S.J.'s] abuse that occurred in his home." The tribe needed assurances that grandfather "has the ability, capacity, and desire to keep [S.J.] safe, well taken care of, close to her Osage heritage, and can/will meet all of her medical needs." The Osage Nation found "it extremely difficult to believe that [S.J.] will be safe in [grandfather's] home." Further, while DCFS justified permitting S.J. and grandfather to sleep in a communal sleeping area in the studio apartment with only a dividing linen to provide privacy on the alleged basis that it is common among "American Indian Nations" to do so, the Osage Nation objected that such sleeping arrangements are not common in the Osage culture.

Around March 16, 2015, the Ministry of Social Services in Canada approved the home of great uncle as a placement option for S.J.

Per the juvenile court's March 19, 2015 order authorizing DCFS discretion to liberalize the parents' visitations with S.J., DCFS increased the frequency of visitations and permitted the parents to have unmonitored visitations with S.J.

In May 2015, DCFS and the Osage Nation recommended that reunification services be terminated. In its May 12, 2015 interim review report, DCFS reported that despite liberalization of visitations, S.J.'s parents had yet to conduct unmonitored overnight visitations and therefore DCFS could not recommend reunification without having conducted an assessment of the parents' ability to care for S.J. during unmonitored overnight visitations. DCFS recommended placement of S.J. in grandfather's home with an appropriate transition plan. In its May 5, 2015 report to the court, the Osage Nation reported that despite the immense increase in visitation and

DCFS's efforts to facilitate such visitation, it could not recommend reunification because of a lack of documentation that either parent had "taken ownership or acknowledgement of the serious abuse that [S.J.] endured while under their care." Further, the report stated that any new placement would require a comprehensive home study, background check, and documentation of the new caregivers' "ability and resources to meet all the medical, physical, emotional, and developmental needs of [S.J.] as well as their ability to maintain her safety, security, and well-being" which had not yet occurred. The Osage Nation recommended S.J. remain with the foster family and reiterated the tribe's concerns with placement of S.J. in grandfather's home.

B. Contested section 366.22 hearing

The section 366.22 hearing commenced on May 12, 2015 and concluded on July 21, 2015. The juvenile court heard testimony from thirteen witnesses; we summarize below the key testimony.

Trujillo,[2] a mental health counselor specializing in children ages zero to five with trauma history, has been treating S.J. since September 2014. Trujillo testified that the child experienced great difficulty before visitations with mother: S.J. exhibited "clingy" behavior toward foster mother, refused to leave the foster mother's side, and refused to communicate or engage in play.

Trujillo also reported a significant regression in S.J.'s behavior since the increase in visitations with mother: refusal to attend school (Trujillo spoke with S.J.'s teachers) and disruption of S.J.'s eating and sleeping patterns.

Trujillo also noted that S.J. has been diagnosed with chronic adjustment disorder with mixed anxiety and depressed mood. In her expert opinion, upon return to mother's custody, the child would likely experience disruptions in eating and sleeping patterns as

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[2] At the time of the section 366.22 hearing, Trujillo was a licensed psychologist in Mexico and was working toward licensure in the United States. By the time of the good cause hearing, Trujillo had obtained her psychotherapy license from the State of California.

well as regression in several areas of functioning including emotional and social capabilities. Trujillo observed that the child was already exhibiting such symptoms.

Trujillo also reported that, during visitations with S.J., mother "needs prompting" to implement proactively the necessary parenting skills and provided specific examples. There were two incidents when S.J. needed asthma medication during the visitations and both times mother failed to respond. In the first instance, S.J. coughed twice but mother failed to respond; in the second instance (which occurred as recently as the day before Trujillo's testimony at the hearing), S.J. coughed twice and, after a minute, coughed twice again but mother failed to respond. This inaction prompted foster mother to tell Trujillo that someone needed to provide the requisite medication to S.J.; in apparent response to foster mother's statement, mother retrieved the child's asthma mask. When mother attempted to place the asthma mask over the child's face, the child refused to accept the mask; Trujillo suggested to mother that she offer S.J. the options of mother or foster mother providing the treatment; after mother gave S.J. those options, the child responded that she wanted foster mother to apply the asthma mask.

The foster parents testified that mother had met them through their church before initiation of this dependency proceeding and mother had initially requested that S.J. be placed with them. They corroborated Trujillo's testimony that S.J. had great difficulties before visitations with mother: for example, the child "clung" to the foster parents, refused to enter the vehicle to be transported to the meeting place, and required up to 50 minutes of coaxing. They also corroborated Trujillo's testimony that, after visitations resumed with mother, S.J. experienced significant regression in behavior: acting aggressively or violently, exhibiting withdrawn behavior, experiencing stomach pains, having nightmares where S.J. screamed in her sleep, and refusing to attend school. At school, S.J. became disobedient to her teachers and refused to talk or participate in activities; around November or December 2014, such problems began occurring on a daily basis.

Mother admitted to the court that she had stopped attending the individual counseling sessions and had not completed the individual therapy required in her case

plan. Once she moved to Canada, she started individual therapy sessions but did not complete more than a few sessions before transferring to a different therapist; in total, she received services from three therapists at three different agencies. When asked about her role in S.J.'s trauma history and her discussions on that topic with the therapists, mother made conclusory statements that she "failed to do [her] job" but she could not provide any specific details or explain how she could prevent such abuse from happening in the future. Further, when asked who injured S.J., mother blamed S.J.'s father.

Mother also testified about the parenting classes in which she participated as part of her case plan. However, mother testified that the main benefit of the parenting classes was the support from other struggling parents and being able to talk about her feelings.

Two representatives from the Osage Nation presented testimony. Lee Collins (Collins) is the director of social services for the Osage Nation and responsible for all child welfare and adult protective services for the tribe. Further, she is the Osage Nation's contact person with the United States Bureau of Indian Affairs. Collins became involved in S.J.'s case in April 2013, on the same day the tribe received notice from the State of California. She has worked closely with DCFS in this case, including efforts to locate an Osage family as a placement option for S.J. Karie Mashunkashey (Mashunkashey) is the Indian Child Welfare specialist for the Osage Nation, has worked with between 70 to 80 Osage children, and has been the ICWA case worker on S.J.'s case since October 2014. She has communicated with the DCFS social workers on this case extensively (over 150 instances). She testified that she made her recommendations based on interviews with the key individuals in this case (S.J., parents, foster parents, grandfather, DCFS social workers) as well as the case files. The juvenile court qualified Mashunkashey as an ICWA expert.

Collins and Mashunkashey provided testimony on their recommendation not to return S.J. to mother's custody. One critical basis for their recommendation was mother's failure to obtain individual therapy to facilitate her understanding of the circumstances surrounding the severe abuse suffered by S.J. (and mother's role in the

abuse), to learn how to identify warning signs of abuse, and to learn how to keep S.J. safe from such abuse.

Further, as the ICWA expert and the ICWA worker assigned to S.J.'s case to ensure compliance with the statute, Mashunkashey testified that DCFS had made active efforts to reunify the family but those efforts had proved unsuccessful.

Elizabeth Elgin DeRouen (DeRouen) is a court advocate employed by a consortium of federally recognized tribes which does not include the Osage Nation. Mother retained DeRouen for assistance in this case; the court deemed DeRouen an ICWA expert.

C. Juvenile court's findings at the section 366.22 hearing

After considering the evidence, the juvenile court determined that there was clear and convincing evidence that the return of S.J. to mother's custody would create a substantial risk of detriment to the child's emotional and/or physical well-being.

As for mother, the juvenile court focused upon mother's failure to comply with the court-ordered individual counseling and her continued blaming of father for the S.J.'s abuse rather than fully accepting responsibility for her actions. The court found that mother, despite participation in three parenting programs, had not made progress toward obtaining the necessary parenting skills: in support of its findings, the court highlighted the allowance incident (where mother provided $40 to S.J. during each visitation and allowed the child to purchase anything with the funds). The juvenile court also credited therapist Trujillo's testimony that during visitations Trujillo had to prompt mother extensively to attend to the S.J.'s needs, a circumstance the court described as "beyond incredible."

The juvenile court found most credible the testimony from Collins and Mashunkashey (an ICWA-qualified expert) particularly because of their expertise in Indian cases and specifically the Osage Nation. The court stated that they were "the two best witnesses that [it] heard in this case" and that it was "placing enormous weight on their testimony." Noting that it is rare for an Indian tribe to recommend *against* placing a child with an Indian family, the court placed great weight on both Osage Nation

representatives' recommendations *not* to return the child to mother. The court also found credible the testimony of the foster parents, in particular their genuine love for and commitment to the child. In contrast, due primarily to mother's proffered witness DeRouen's failure to interview key individuals including the child's therapist, the juvenile court stated that it was "giving no weight" to DeRouen's testimony.

Highlighting the evidence of the need for extensive coaxing to persuade the child to visit mother (which situation had not substantially improved over time) and the manner in which S.J. clung to the foster mother before a scheduled visitation, the juvenile court found that S.J. "has never really been comfortable visiting with these parents, and particularly the mother."

The juvenile court also found that DCFS had made "extreme" active efforts to reunify mother with S.J. but those efforts had proved unsuccessful in preventing the breakup of the family. The court noted the length of time that DCFS had provided services in this case (four years) and observed that DCFS had provided very liberalized visitation: "I have not seen this much visitation in any case that I have ever done." The court observed that DCFS had provided "so much contact and assistance . . . that I cannot imagine what else could have been done to help these parents." The court noted that DCFS had arranged free transportation for mother to attend the visitations with S.J., DCFS had obtained locations for the visitations, and DCFS had arranged for additional contact with the child outside the visitations, including Skype sessions after mother moved to Canada; DCFS had even invited mother to participate in the child's medical, eye, dental, and regional center appointments.

D. Events leading up to the good cause hearing

On October 20, 2015, in a last minute information for the court, DCFS reported to the court that it had concluded that while S.J. had medical issues, she was developing age appropriately. DCFS also recommended S.J. continue to be provided with therapeutic mental health services. Although DCFS had previously received an ICPC (Interstate Compact for the Placement of Children) home study for great uncle's home in Canada, DCFS reported the need to obtain a new home study to include an assessment of great

uncle's now-wife who would also be living in the home. Thus, DCFS recommended to the court that it require a current adoptive home study for great uncle.

Also on October 20, 2015, the Osage Nation reported to the court that it had many concerns about the ICPC home study and that the tribe did not consider it an approved home study; among the tribe's concerns were these: (1) the home study did not include an evaluation of great uncle's wife, (2) the study was not specific to S.J., (3) the home study did not engage great uncle and his wife on the specific details of S.J.'s abuse, the specific medical and psychological needs of S.J., or identification of specific service providers in great uncle's area certified to treat S.J.'s needs, and (4) the study did not discuss S.J.'s Osage heritage and great uncle and his wife had not stated whether they plan on keeping S.J. connected to her Osage culture. Further, based on statements by father, the Osage Nation had concerns that great uncle might have a plan to return S.J. to mother's custody once the child moved to great uncle's home in Canada (beyond the Osage Nation and DCFS's jurisdiction). The Osage Nation therefore recommended that S.J. remain with the foster family.

On November 4, 2015, in a last minute information for the court, DCFS reported that it had changed its recommendation and now recommended placement with great uncle in Canada. The report did not state the specifics of its previous recommendation or that a new home study for great uncle had been conducted or approved; also, the report stated no reason for its change in position other than that "permanence should not be delayed any further."

E. Contested good cause hearing

On November 4, 2015, the juvenile court commenced a good cause hearing which continued over eight days. We summarize below the key testimony.

The court deemed Trujillo an expert in marriage and family therapy, specifically child/parent psychotherapy. Trujillo testified similarly to her testimony in the section 366.22 hearing that S.J. has a chronic adjustment disorder and the child has an "extreme fear of leaving the foster parents." When Trujillo first met S.J. at the end of 2014, the child was "smiling, singing, engaging in more reciprocal play, two-way

communication[,] not clingy." But when visitations with mother and grandfather resumed, S.J. "regressed" and experienced the regressive symptoms that Trujillo had discussed in the section 366.22 hearing. However, after the court terminated reunification services for mother at the section 366.22 hearing and Trujillo explained to S.J. that she could continue living with the foster family, Trujillo observed that the child expressed happiness by dancing and singing, the regressive symptoms decreased, and "she went back to baseline when I met her." In the few weeks before the good cause hearing to determine whether S.J. would be placed with great uncle or grandfather, S.J. regressed again: throwing objects and "hurting teachers, like leaving marks and bruises because she doesn't want to leave either foster dad or foster mom."

With regard to the child's response to a break in the primary attachment to the foster family due to a placement with great uncle in another country, Trujillo opined that "there's a high possibility of regression in several areas of . . . biological functioning, sleeping, eating patterns, energy patterns, school aggression, increase of aggression, increase of sadness, anxiety, nightmares." Further, Trujillo cautioned that any new caregivers must be well-equipped to handle such regressions and aggressive behavior.

Trujillo opined that if placement occurred with great uncle, S.J. would need "a mental health professional qualified in birth-to-five, and trauma-informed treatment (preferably Child-Parent Psychotherapy)." However, Trujillo testified that she was unable to find qualified mental health providers for S.J. in the rural area near great uncle's home in Saskatchewan.

Mashunkashey provided the recommendation of the Osage Nation. She testified that there was insufficient evidence that S.J. would be safe and her needs would be met in great uncle's home; therefore, the tribe did not recommend placement of the child with great uncle. Mashunkashey emphasized the lack of an approved adoptive home study.

The testimony of both Mashunkashey and great uncle proved that great uncle had little or no insight into the parents' abuse of S.J. or their failure to provide proper care for the child. Great uncle demonstrated no solid ability or knowledge on how to protect the child from future abuse. He had no awareness of the full extent of S.J.'s recent regressive

symptoms and how to handle the likely regression caused by a future placement. He had met with S.J. for three visitations in June 2015 for two to three hours each visitation.

Paul Loya (Loya), the social worker in DCFS's American Indian unit assigned to S.J.'s case since July 2015, testified that the foster mother had reported that grandfather had suggested that great uncle and mother had a plan to return S.J. to mother's custody upon placement of the child with great uncle in Canada. According to great uncle's testimony, mother spoke with great uncle's wife on the phone every other day, and visited great uncle's home every other month. Loya testified that mother had failed to report accurately to DCFS the closeness of her relationship with great uncle and his wife.

Loya testified that he had attempted to locate suitable therapy providers for S.J. near great uncle's home in Saskatchewan. He had contacted Karen Rosemarie Richard (Richard), the executive director of Catholic Family Services of the Battleford, and Diane Lauritzen from the Battleford Mental Health Centre.

Richard testified that her organization does not have experience providing psychotherapy to children as young as S.J. Although Richard suggested that the agency's clinical director Faye Beamanlang was available to work with S.J., she acknowledged that Beamanlang's main experience was with "adults and youth" and that Beamanlang only had "some experience with children"; Richard could not state whether Beamanlang had experience working with children as young as S.J.

Loya testified that Battleford Mental Health Centre had "trauma focused expertise" but again he did not specify whether the facility had experience with children as young as S.J.

F. Juvenile court's findings at the good cause hearing

On December 4, 2015, after considering the evidence and hearing the argument of counsel, the juvenile court ruled that good cause existed to deviate from the ICWA placement preferences and that S.J. is to remain with the foster family. First, the court considered the parents' requests but concluded that they were inconsistent: mother had requested placement with great uncle in Canada and father had requested placement with the foster family.

Second, the court found Trujillo to be a qualified expert and relied on her expert opinion to conclude that S.J. has extraordinary emotional needs. The court noted the evidence that the child had extreme difficulty transitioning into visitations with mother and grandfather, and the evidence that the child had similar difficulty attending a new school. Based on those incidents caused by mere visitations and a change in school, the juvenile court inferred that the child would likely suffer even more emotional harm upon a change in placement to a new home and a new country. Relying on Trujillo's expert testimony that S.J. has an adjustment disorder, the court determined that there was a high likelihood that the child would not be able to "re-attach or readjust" to a new home with strangers. In contrast to S.J.'s strong bond with the foster family, the court found "no real relationship" between the child and great uncle.

The juvenile court also considered that the foster family had participated in "far more" Osage Nation activities than great uncle, grandfather, or mother. The foster family had taken S.J. on several trips to Oklahoma for Osage Nation ceremonies; in contrast, mother had withdrawn her affiliation with the Osage Nation for a period of time.

The juvenile court also relied on the Osage Nation expert Mashunkashey's recommendation *not* to place S.J. with great uncle or grandfather. The court found that there were too many unaddressed concerns with moving the child to another country including the concerns raised by Mashunkashey: about the initial abuse of S.J., the current emotional needs of S.J., and how to provide proper care for the child. The juvenile court found that there were no appropriate psychological counseling services available near great uncle's home in Saskatchewan, specifically a specialist for children ages zero to five or anyone "even remotely" as qualified as Trujillo in trauma-based counseling. Not only was the court concerned with the lack of qualified counseling, particularly for a child who has received such specialized counseling for the majority of her life, the court was also concerned that great uncle did not know what happened to S.J. to cause her to go to a hospital. In addition, the juvenile court found that no entity had suggested a "real transitional plan [for a placement with great uncle] other than three sessions, which clearly would not be enough." The court shared the Osage Nation's

concern that evidence suggested that great uncle and mother had a plan, once the court placed S.J. with great uncle in Canada, to return the child to the custody of mother who lived only 10 minutes away from great uncle. And, as grandfather had failed to protect the child from the initial abuse that caused the dependency proceeding and the child had not bonded with grandfather, the juvenile court agreed with the Osage Nation's recommendation against placement with grandfather.

III. Procedural history

A. Petition for extraordinary writ (related to the section 366.22 hearing)

After the section 366.22 hearing, mother filed a petition for extraordinary writ arguing that (1) there was not substantial evidence to support the juvenile court's conclusion that DCFS had made active efforts to reunify mother and S.J. and (2) there was not substantial evidence to support the juvenile court's decision to terminate reunification services.

DCFS, father, and S.J. filed separate answers arguing that (1) DCFS provided active efforts to reunify S.J. with her parents and (2) substantial evidence supported the juvenile court's decision to retain S.J. in out-of-home care.

B. Direct appeal (related to the good cause hearing)

After the good cause hearing, mother and DCFS appealed and filed separate opening briefs arguing that there was not substantial evidence to support the juvenile court's good cause finding and seeking reversal of the court's ruling in order to place S.J. in the home of great uncle or grandfather.

Father and S.J. filed separate respondent's briefs arguing that substantial evidence supported the juvenile court's finding of good cause to deviate from the placement preferences under ICWA and that mother and DCFS had failed to meet their burden of proof as appellants.

DISCUSSION

I. Standard of review

We review for substantial evidence both the juvenile court's finding that DCFS made active efforts to provide the required remedial services and rehabilitative programs

and the juvenile court's finding that S.J. would be at substantial risk of detriment if returned to mother's custody. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 715–716; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) In reviewing a juvenile court's determination of good cause to deviate from ICWA's placement preferences, we also apply the substantial evidence standard of review. (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 646.)

Under the substantial evidence standard of review, we do not evaluate the credibility of witnesses, reweigh the evidence, or express an independent judgment on the evidence. (*Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.) "[I]ssues of fact and credibility are matters for the trial court alone." (*Ibid*.) Rather, we draw all reasonable inferences in support of the juvenile court's findings, resolve all conflicts in favor of the prevailing party, and view the record in the light most favorable to the juvenile court's order. (*Ibid.*; *In re H.E.* (2008) 169 Cal.App.4th 710, 724.)

Presuming in support of the juvenile court's finding the existence of every fact the trier could reasonably deduce, we uphold the finding unless no rational trier of fact could reach the same conclusion by the requisite standard. (*In re H.E.*, *supra*, 169 Cal.App.4th at p. 724.) Even if there is evidence to support a contrary finding, we uphold the juvenile court's finding as long as there is substantial evidence that supports the conclusion of the trier of fact. (*In re G.L.* (2009) 177 Cal.App.4th 683, 697–698; *Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.)

"Mere support for a contrary conclusion is not enough to defeat the [juvenile court's] finding." (*In re H.E.*, *supra*, 169 Cal.App.4th at p. 724.) Similarly, the mere existence of evidence from which a different trier of fact might have made a contrary finding in an exercise of discretion is insufficient to warrant reversal. (*Ibid.*) The petitioner or appellant has the burden to show "there is no evidence of a sufficiently substantial nature to support the court's findings." (*In re G.L.*, *supra*, 177 Cal.App.4th at p. 698.)

II. Mother's petition for extraordinary writ

A. Applicable provisions of ICWA and California law

After removing a child from the home, the juvenile court attempts, for a specified period of time, to reunify the family. After the expiration of the specified time period, the juvenile court must order the return of the child to the physical custody of her parent unless the court finds, by a preponderance of the evidence, that the return of the child would create "a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a)(1).[3]) DCFS bears the burden to establish detriment. (*Ibid.*)

In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. (§ 366.22, subd. (a)(1).) Failure of a parent to participate regularly and to make substantive progress in court-ordered treatment programs is prima facie proof that return of the child to the custody of that parent would be detrimental. (*Ibid.*)

The juvenile court may also consider these factors: (a) whether a change in custody would be detrimental "because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm," (b) "properly supported psychological evaluations which indicate return to a parent would be detrimental to a minor," (c) instability in terms of the parent's ability to manage a home, (d) "difficulties a minor has in dealing with others," (e) "limited awareness by a parent of the emotional

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[3] Mother contends that the juvenile court must also make the additional detriment finding set forth in title 25 United States Code section 1912(e). That statute requires that when a court orders foster care placement, it must make a determination, based on a showing of clear and convincing evidence including testimony of qualified expert witnesses, that the "*continued* custody of the child by the parent is likely to result in serious emotional or physical damage to the child." (Italics added.) Thus, title 25 United States Code section 1912(e) applies *before* a juvenile court orders foster care placement which generally occurs at a dispositional hearing, not at a review hearing to determine whether a child already placed in foster care should return to parental custody. (See, e.g., *In re Abbigail A.* (2016) 1 Cal.5th 83; *In re E.R.* (2016) 244 Cal.App.4th 866, 873, 880.) We therefore reject mother's argument on this point.

and physical needs of a child," (f) "failure of a minor to have lived with the natural parent for long periods of time," and (g) "the manner in which the parent has conducted . . . herself in relation to a minor in the past." (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704–705.) The focus is on the child's well-being rather than the initial grounds for juvenile court intervention. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)

Under ICWA, the juvenile court must also determine whether DCFS made "active efforts" to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.[4] (25 U.S.C. § 1912(d); § 361.7, subd. (a).) California law provides that "active efforts shall be assessed on a case-by-case basis"; active efforts must take into account "the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe"; and active efforts must "utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers." (§ 361.7, subd. (b).) We contrast passive efforts and active efforts as follows: passive efforts occur "'where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition'"; in contrast, active efforts occur "'where the state caseworker takes the client through the steps of the plan.'" (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1287.) The applicable standard of proof in finding active efforts is clear and convincing evidence. (*In re Michael G., supra*, 63 Cal.App.4th at p. 704.)

Although the United States Bureau of Indian Affairs recently revised the Federal Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

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[4] Although mother argues that the active efforts in ICWA cases set forth in title 25 United States Code section 1912(d) and Welfare and Institutions Code section 361.7, subdivision (a), is a higher burden than the "reasonable efforts" in non-ICWA cases, California courts have held that the two standards are synonymous. (*In Adoption of Hannah S.* (2006) 142 Cal.App.4th 988, 998; *In re A.A.* (2008) 167 Cal.App.4th 1292, 1317; *In re Michael G.* (1998) 63 Cal.App.4th 700, 714.)

(80 Fed.Reg. 10146 (Feb. 25, 2015)), the State of California has not yet adopted the guidelines; thus, the guidelines are not binding on this court. Nevertheless, the guidelines define active efforts as including these actions: engaging the Indian child and her parents and extended family members; "[t]aking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards"; "[m]aking arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal"; and "[s]upporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child." (*Id.* at p. 10150.)

If the efforts to reunify the family have failed, the court terminates reunification efforts and sets the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. (§§ 366.21, subds. (g), (h), 366.22, subd. (a)(3).)

B. Substantial evidence supports the juvenile court's finding that the return of S.J. to her parent would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being.

In support of her writ petition, mother effectively asks us to retry the section 366.22 hearing: her arguments complain that the juvenile court placed too little or too much emphasis on certain evidence or that the juvenile court misinterpreted certain witness testimony. Issues of credibility are the domain of the trier of fact; our task is not to reweigh the evidence or select between competing inferences but merely to determine whether there was substantial evidence from which the juvenile court could reasonably have reached the conclusion it did.

First, there is no dispute that mother failed to complete the individual therapy required by her case plan. Pursuant to the statute, mother's failure to participate regularly or make substantive progress in a court-ordered treatment program constitutes prima facie evidence that return of S.J. to mother would be detrimental. (§ 366.22, subd. (a)(1).) In light of the original basis for dependency jurisdiction, the objective of

the individual therapy necessarily focused on mother's understanding and appreciation of the significance of the abuse suffered by the child; therefore, having a licensed therapist opine on mother's ability to engage in insight-oriented therapy, enhanced parenting skills, and anticipatory parental planning skills, would have been germane to the inquiry—no such testimony occurred.

Conceding that she did not complete the individual therapy required by her case plan, mother nevertheless argues that the juvenile court improperly relied on her therapist's 2012 letter opining on mother's lack of progress because it was too remote in time and that mother's participation in the child-parent psychotherapy (ordered for S.J.) satisfied the individual therapy requirement (ordered for mother).

The paucity of therapist input on mother's behalf rests on her shoulders—if she had participated regularly and more recently in individual therapy, then there presumably would have been a more recent therapist opinion available. Further, mother's own testimony which failed to address adequately her responsibility for the abuse undermines her suggestion that the therapist's opinion relied on by the juvenile court is outdated.

As to the child-parent psychotherapy, mother fails to point to any expert opinion from a licensed therapist that child-parent psychotherapy is equivalent to individual therapy for the parent; indeed, common sense would suggest otherwise. Further, although mother participated in collateral sessions (where only the caregiver is present) in addition to dyadic sessions (where both the caregiver and the child are present) as part of S.J.'s child-parent psychotherapy treatment, those sessions are for the benefit of S.J. and do not include individual therapy intervention for mother.

Second, mother contends the juvenile court failed to consider her completion of the parenting program required by the case plan and her participation in additional parenting classes. Mother argues that during her testimony she provided specific examples of parenting lessons that she had learned from the parenting classes but the juvenile court improperly focused on the allowance incident; thus, she contends that the juvenile court mischaracterized her testimony.

However, mother's argument seems to suggest that mere participation in parenting classes is sufficient. While attendance is a factor to be considered, it is not determinative. The court must also consider whether mother has made any progress toward meeting the spirit and the letter of the case plan's objective to address adequately the problems that led to the abuse or neglect of the child. The inquiry is not "quantitative (that is, showing up for counseling or therapy or parenting classes . . .)" but rather "qualitative (that is, whether the counseling, therapy or parenting classes are doing any good)." (*Constance K. v. Superior Court*, *supra*, 61 Cal.App.4th at p. 706.)

Mother's testimony failed to demonstrate that she had gained the requisite parenting skills, specifically: the ability to pick up on S.J.'s cues and to tend to the child's needs. More importantly, Trujillo's testimony demonstrated that mother had failed to implement any such skills during her visitations with S.J. The evidence demonstrated that because mother continued to rely on others for parenting help, she would not be able to take care of S.J.'s needs alone. We also note that mother has never had custody of S.J. on a long-term basis; her assertions of improved parenting skills are pure speculation. (See *Constance K. v. Superior Court, supra*, 61 Cal.App.4th at pp. 704–705.)

Third, mother contends that the only evidence of potential emotional detriment is S.J.'s emotional difficulty in handling the transitions and that the juvenile court erred in viewing S.J.'s transitional difficulties as caused by the child's lack of bonding with mother. However, mother's characterization of the record ignores the emotional turmoil that S.J. suffered apart from the transitions (demonstrated by testimony from Trujillo and the foster parents). And while mother argues that the transitions had improved, foster mother testified that only a week before her testimony at the hearing the transition required 50 minutes of coaxing S.J. to participate in the visitation with mother.

Finally, mother construes certain comments of the juvenile court as showing it improperly shifted to her the burden to establish the absence of detriment. But the juvenile court's comments, viewed in context and in their entirety, do not indicate the court relieved DCFS of its burden of proof on the detriment issue. The record shows that

the juvenile court duly considered the evidence presented. Given mother's failure to complete the court-ordered services, prima facie evidence of detriment exists which mother has the burden to rebut with supporting evidence.

We have no difficulty concluding, on this record, that substantial evidence supports the juvenile court's finding a substantial risk of detriment to S.J. if it ordered the child returned to mother's custody.

C. Substantial evidence supports the juvenile court's finding that DCFS made active efforts to reunify mother with S.J.

Mother's main argument in her writ petition is that DCFS did not make sufficient efforts to facilitate visitations between mother and S.J. The record shows, however, active efforts by DCFS to facilitate visitations.

Specifically, after mother moved to Canada, she stopped attending the visitations with the child for six months and failed to provide any contact information; nevertheless, DCFS made efforts to contact mother, coordinated Skype sessions between mother and the child twice per week, and scheduled in-person visitations and counseling sessions during mother's trips to Los Angeles. When mother returned to Los Angeles in April 2015 and planned to remain in the area until September 2015, she had consistent visitations on Mondays and Wednesdays for a duration of two hours and on Sundays for six hours. (Father had visitations with S.J. on Tuesday, Thursdays, and Saturdays.) The DCFS social worker provided mother transportation to the visitations including by personally driving the parents and child when necessary. Further, training on S.J.'s asthma treatment was a prerequisite to unmonitored visitation yet mother did not attend the training until April 30, 2015 (only a few weeks before the section 366.22 hearing). After mother received the appropriate medical training, DCFS facilitated unmonitored visitations with S.J.

The ICWA expert Mashunkashey testified that these were the types of active efforts and reunification services that she would expect to see from DCFS. Thus, taken as a whole, the record contained substantial evidence that DCFS made active efforts to facilitate visitation under the circumstances. While we are sympathetic to mother's

desire to move to Canada for personal reasons, her move to another country during a critical period of time in this dependency proceeding presented a substantial obstacle to increased monitored and unmonitored visitation.

Mother also argued that DCFS delayed in providing active efforts until December 2014 when DCFS transferred the matter to Javier in DCFS's American Indian Unit. Nevertheless, mother's counsel conceded that after the transfer DCFS provided active efforts as required by statute. DCFS contacted the extended Indian family, evaluated grandfather as a placement option or as a means for facilitating visitations between the parents and the child, independently investigated the parents' progress with visitations, and remedied transportation barriers to visitations. Thus, by mother's own admission, DCFS provided active efforts during the seven months from December 2014 to July 2015. Moreover, as S.J. was under the age of three at the time of her initial detention, the statute entitled mother to six months of services which mother admits she received. (§ 361.5, subd. (a).) Indeed, mother received reunification services during the first year of the dependency proceeding from April 2012 (6-month review hearing) to December 2012 (12-month review hearing) and after remand for nine months from November 2014 to July 2015—well over the six-month requirement.

Mother also holds up the opinion of her proffered witness DeRouen to be superior to the opinions of Mashunkashey and Collins. But the record shows that the juvenile court heard the testimony of all three witnesses and the court found the Osage Nation representatives to be substantially more credible than DeRouen. The evidence shows that Mashunkashey and Collins had extensive relevant expertise and they had the best interests of S.J. and the Osage people at heart. In contrast, DeRouen has no official affiliation with the Osage Nation, had no official involvement in this case prior to the hearing, and failed to interview key individuals including Trujillo. Thus, the juvenile court reasonably credited the testimony of Collins and Mashunkashey; it is beyond our purview to disturb its assessment.

III. Mother and DCFS's appeal

A. Applicable provisions of ICWA and California law

Consistent with the provisions of ICWA, California law mandates that in any adoptive placement of an Indian child, the order of preference is: "(1) a member of the child's extended family," [¶] (2) other members of the Indian child's tribe; or [¶] (3) other Indian families." (25 U.S.C. § 1915(a); Welf. & Inst. Code, §§ 224, subd. (b), 361.31, subd. (c); Cal. Rules of Court, rules 5.482(f), 5.484(b)(1).) ICWA defines "extended family member" as "a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2).)

Significantly, the court may deviate from the placement preferences for "good cause." (25 U.S.C. § 1915; Welf. & Inst. Code, § 361.31, subd. (h); Cal. Rules of Court, rule 5.484(b)(1).) The party asserting that there is good cause to depart from the ICWA placement preferences must demonstrate it by clear and convincing evidence. (*In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1348.)

In making the good cause determination, the court must consider the placement preference of the Indian child (if the child is of sufficient age) or her parents, the extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness, and the unavailability of suitable families who meet the preference criteria. (§ 361.31, subds. (e), (h); Cal. Rules of Court, rule 5.484(b)(2).) There need not be a showing of "certainty" that the Indian child would suffer harm if the court followed the placement preferences; rather, a court may find good cause upon a showing that "there is a significant risk that a child will suffer serious harm as a result of a change in placement." (*In re Alexandria P.*, *supra*, 228 Cal.App.4th at p. 1354.)

"[T]he prevailing social and cultural standards of the Indian child's tribe shall be applied in meeting the placement preferences"; such a determination of the prevailing standards may be confirmed by the tribe or "by the testimony or other documented support of a qualified expert witness." (§ 361.31, subd. (f).) Any person or court

involved in the placement of an Indian child shall use the tribe's services in seeking to secure placement and in the supervision of the placement. (§ 361.31, subd. (g).)

The recently-enacted and non-binding guidelines from the United States Bureau of Indian Affairs (discussed above) provide that a good cause determination must be based on one or more of these considerations: "(1) the request of the parents, if both parents attest they have reviewed the placement options that comply with the order of preference; [¶] (2) [t]he request of the child, if the child is able to understand and comprehend the decision that is being made; [¶] (3) [t]he extraordinary physical or emotional needs of the child," including whether "specialized treatment services may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness, provided that extraordinary physical or emotional needs of the child do[] not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with [ICWA]; [¶] (4) [t]he unavailability of [an ICWA-compliant] placement," including whether a placement "meets the physical, mental and emotional needs of the child." (80 Fed.Reg. 10146 at p. 10158; see *In re Alexandria P.* (2016)1 Cal.App.5th 331 [discussing the 2015 guidelines and 2016 final rule taking effect on Dec. 12, 2016].)

B. Substantial evidence supports the juvenile court's finding of good cause to deviate from the ICWA placement preferences.

Here, the evidence is compelling that good cause existed to forego placement of S.J. with great uncle or grandfather. As an initial matter, we consider significant the fact that both the Osage Nation expert Mashunkashey and the attorney for the S.J. opposed placing the child with either great uncle or grandfather. (See *In re Alexandria P.*, *supra*, 1 Cal.App.5th at p. 359 [court upheld departure from ICWA placement preferences, minor agreed with court or was silent]; § 361.31, subds. (f), (g).)

C. DCFS's contentions

On appeal, DCFS makes three principal arguments. First, an ICWA violation aggravated the length of time that the child remained with the foster family; accordingly,

the juvenile court erred in considering as a factor in its good cause determination S.J.'s bond with the foster family (and any emotional trauma that S.J. may suffer from being removed from the long-term placement with the foster family). According to DCFS, the juvenile court has erroneously concluded that S.J. has extraordinary emotional needs. Mother makes a similar argument that the court erred in relying on S.J.'s bond with the foster parents; her brief "adopts herein by reference" DCFS's argument on this point.

However, DCFS relies on the Bureau of Indian Affairs guidelines which are non-binding on this court and only advisory. Even if we were to consider the guidelines, they expressly state that only "ordinary" bonding or attachment should not be considered when making a good cause determination. Here, Trujillo's testimony and the evidence of S.J.'s emotional trauma supports the juvenile court's finding that S.J.'s bond with the foster family and her emotional needs reached the level of extraordinary.

Second, according to DCFS, the juvenile court erred in finding S.J. has extraordinary emotional needs because there was allegedly no evidence that S.J.'s regressive symptoms would continue once the child was in a secure permanent placement with relatives. Further, DCFS alleged that there was no evidence that S.J.'s emotional needs could not be treated by qualified mental health providers near great uncle's home in Saskatchewan. DCFS also contended that there was no evidence that the child could not form a bond with new caretakers.

The record does not support any of those claims. Rather, as discussed above, Trujillo's testimony provides expert opinion contradicting DCFS's assertions. Thus, DCFS's argument in this regard appears to be little more than a concerted effort to have this court reweigh the evidence presented which we may not do. (See *Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.)

Third, DCFS disagrees with the Osage Nation's disapproval of grandfather as a placement because even though the initial abuse occurred in his home, grandfather "threatened his own daughter with calling authorities if she did not take [S.J.] to the hospital, which triggered DCFS's initial involvement." Mother also argues that

grandfather is not "culpable for [S.J.]'s initial abuse" and therefore the juvenile court should not have rejected grandfather's home as a placement option.

But the juvenile court is entitled to credit the tribe's expert opinion over DCFS's contradicting opinion; essentially, DCFS is asking us to substitute the juvenile court's assessment of the evidence with our own. (See *Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.) As discussed above, the Osage Nation does not recommend placement with grandfather based on several concerns that grandfather failed to address in his testimony at the hearing. It was reasonable for the juvenile court to credit the tribe representative's testimony and recommendation.

D. Mother's contentions

On appeal, mother questions the strength of the evidence relied on by the juvenile court, emphasizes contradictory evidence, and asks this court to adopt her assessment of the record over that of the trial court. However, we may not do so. (*In re H.E.*, *supra*, 169 Cal.App.4th at p. 724; *Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.)

Mother asserts that the juvenile court should have relied on testimony from Loya and Richard, rather than Trujillo's testimony, to conclude that there are suitable therapy providers for S.J. near great uncle's home in Saskatchewan. However, neither Loya nor Richard testified that a facility near great uncle's home has experience providing child psychotherapy to children as young as S.J.. Thus, the juvenile court reasonably credited the opinion of Trujillo (the child-parent psychotherapy expert and S.J.'s therapist) that no equivalently qualified therapists existed in the rural area near great uncle's home.

Mother argues the juvenile court made the wrong inference from S.J.'s transitional difficulties and that the court should have inferred that the cause of the child's trauma was the presence of the foster mother during the transition or uncertainty over her future placement, not a lack of bonding with mother or grandfather. However, under the substantial evidence standard of review, we draw all reasonable inferences in support of the juvenile court's findings. Noting S.J.'s severe difficulties in transitioning to short-

term visitations, the juvenile court has inferred that the child would suffer even more trauma in transitioning to a new permanent home with unfamiliar persons in a new country. This inference is reasonable in light of Trujillo's testimony.

Mother also attacks Trujillo's testimony by arguing that the law requires a qualified expert witness to establish that an Indian child has extraordinary emotional needs. But mother ignores that the juvenile court determined that Trujillo is a qualified expert witness. Further, there was no objection when the court deemed Trujillo an expert in marriage and family therapy and specifically in child-parent psychotherapy. Thus, Trujillo meets the qualifications required by section 224.6, subdivision (c)(3) as a "professional person having substantial education and experience in the area of his or her specialty."

Mother further contends that the juvenile court mistakenly thought S.J. had been diagnosed with "separation anxiety" rather than chronic adjustment disorder with mixed anxiety and depressed mood. However, the record shows that in the very same sentence, the juvenile court corrected itself and stated that the child has "adjustment disorders."

Mother also notes that Trujillo testified that S.J. could form a new attachment with the "right support" of new caregivers. However, the juvenile court's finding is that great uncle and grandfather could not provide the proper support for S.J.'s needs and, as discussed above, substantial evidence supports the juvenile court's finding. It is not for this court to reweigh the evidence on review, as mother would have us do.

According to mother, the juvenile court has also erred in relying on the lack of a specific transition plan for a placement with great uncle. Mother argues that Loya and Trujillo testified that they would collaborate with the appropriate parties to ensure an appropriate transition plan is in place if the court placed S.J. with great uncle. Further, mother contends that any extraordinary emotional needs of S.J. could be mitigated by an appropriate transition plan. Thus, mother argues that the juvenile court should have continued the hearing for receipt of a detailed transition plan or ordered placement with great uncle and a transition plan to be developed by DCFS in consultation with Trujillo and the family. But the juvenile court was entitled to make a decision based on the

evidence presented. Here, the court reasonably determined that the lack of a transition plan supported its determination not to place S.J. with great uncle.

Mother contends that it is irrelevant that the foster parents participated in more Osage Nation cultural events than herself, great uncle, or grandfather. But mother cites no legal authority that precludes the juvenile court from considering this factor. By using the term "good cause," Congress intends to provide state courts with flexibility to determine the placement of an Indian child. (*Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at pp. 641, 643, 646.) Indeed, section 361.31, subdivision (i) reflects the benefit in an Indian child being placed with a family committed to "participation in the cultural and ceremonial events of the child's tribe."

Mother asserts that insufficient evidence supported the juvenile court's concern that great uncle and mother had a plan to return S.J. to mother's custody because the only supporting evidence consisted of alleged hearsay statements. Although the juvenile court overruled mother's hearsay objections, mother did not challenge those evidentiary rulings on appeal. The juvenile court is entitled to consider such evidence and to disbelieve great uncle and mother's self-serving denials of any such plan; we are not at liberty to second guess the juvenile court's credibility determinations. Further, there is additional supporting evidence in the form of mother's inaccurate reporting to DCFS of the closeness of her relationship with great uncle's wife; it is reasonable for the juvenile court to make the inference that mother had an ulterior motive.

Thus, mother's arguments fail under the substantial evidence review.

DISPOSITION

In B269203, the order is affirmed. In B265793, the petition is denied. The stay of the Welfare and Institutions Code section 366.26 planning hearing is hereby vacated.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.