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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANGEL M., a Person Coming Under the Juvenile Court Law.	B290966
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. APRIL B., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK11818)

APPEAL from an order of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Conditionally reversed with directions.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

In this appeal from an order terminating parental rights, mother contends the juvenile court committed reversible error by failing to provide the notification required by the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related California statutes (Welf. & Inst. Code, § 224 et seq.).[1] We conclude that because the juvenile court had been advised of the child's possible Apache or Choctaw ancestry, notice of the dependency proceedings should have been given to those tribes and to the Bureau of Indian Affairs (BIA). We therefore conditionally reverse the termination order and remand for compliance with ICWA's notice requirements.

FACTUAL AND PROCEDURAL BACKGROUND

A. Dependency Proceedings

Angel M. (born in May 2012) is the child of April B. (mother) and Nathan M. (father). The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in June 2015, when three-year-old Angel and her parents were discovered living in a make-shift tent 20 feet from a freeway. The parents were arrested and charged with child endangerment, and Angel was placed in foster care.

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

On July 10, 2015, DCFS filed a dependency petition on behalf of Angel. It alleged that mother and father placed Angel in an endangering home environment, the parents engaged in domestic violence in Angel's presence, and father had lost custody of Angel's five half-siblings in 2004 after severely abusing one of them. The juvenile court sustained the allegations of the petition on August 12, 2015, and ordered reunification services for mother only.

On October 11, 2016, the court terminated mother's family reunification services and set a section 366.26 hearing. On May 2, 2018, the juvenile court concluded that Angel was adoptable and that no exception to adoption applied. It therefore terminated parental rights and freed Angel for adoption by her caregivers. Mother timely appealed.

B. The Juvenile Court's Inquiry and ICWA Findings

Prior to the June 2015 detention hearing, father filed an ICWA-020 Parental Notification of Indian Status Form. Father checked a box stating that he was or might be a member or eligible for membership in a federally recognized tribe. On a subsequent line, he identified the "Apache or Chucktaw [*sic*]" tribe on paternal grandparents' side, and provided the paternal grandmother's name. Father did not provide any additional information regarding possible Indian ancestry.

At the detention hearing, the juvenile court asked father about the information provided in his ICWA-020 form, as follows:

"[The Court]: Okay. Mother indicates no Indian ancestry. [¶] The father may have Apache or Choctaw?

"[Father's counsel]: Yes, Your Honor.

"The Court: [Through] . . . the paternal grandparent—the paternal grandmother. Your mother is deceased. Is your father living?

"The Father: I wouldn't know.

"The Court: Okay.

"The Father: I haven't talked to him in years.

"The Court: Is there anybody else in the family who we can contact to get more information on whether you're registered with a tribe or eligible?

"[Father's counsel]: No, Your Honor.

"The Court: And is that—do you have any idea . . . does the father have any idea whether he's registered or eligible, or is this family lore that he's heard about?

"[Father's counsel]: No, Your Honor. The father does not have a registration card for any tribe.

"The Court: Okay. I'm not going to find that ICWA applies yet. But I'm going to defer the finding. The Department is to interview the father and see if there are any relatives that can be interviewed and report on that at the jurisdiction disposition hearing."

At the court's direction, in July 2015, a dependency investigator (DI) attempted to interview father about his possible Apache or Choctaw heritage. The DI reported that father became upset about the questions, saying they were not relevant, and repeatedly changed the subject. Father then said he would not answer any questions because all of his relatives had passed away and he did not know their full names or dates of birth. Accordingly, the DI said she was unable to give notice to the tribes because no identifying information had been provided.

At the disposition hearing in August 2015, the court found there was no reason to know Angel was an Indian child, and thus it did not order notice to be given to any tribe or to the BIA.

DISCUSSION

The sole issue on appeal is whether the information father provided about his possible Indian ancestry was sufficient to trigger ICWA's inquiry and notice requirements. For the reasons discussed below, we conclude that DCFS conducted a proper ICWA inquiry, but that it failed to provide notice to the relevant tribes and the BIA. We therefore conditionally reverse the order terminating parental rights and return the matter to the juvenile court.

A. Governing Law and Standard of Review

"ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family. (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8 (*Isaiah W.*); *In re W.B.* (2012) 55 Cal.4th 30, 47.) For purposes of ICWA, an 'Indian child' is an unmarried individual under age 18 who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. (25 U.S.C. § 1903(4) [definition of ' "Indian child" '] & (8) [definition of ' "Indian tribe" ']; see Welf. & Inst. Code, § 224.1, subd. (a) [adopting federal definitions].)

"As the California Supreme Court explained in *Isaiah W.*, notice to Indian tribes is central to effectuating ICWA's purpose, enabling a tribe to determine whether the child involved in a

dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 8.) Notice to the parent or Indian custodian and the Indian child's tribe is required by ICWA in state court proceedings seeking foster care placement or termination of parental rights 'where the court knows or has reason to know that an Indian child is involved.' (25 U.S.C. § 1912(a).) Similarly, California law requires notice to the parent, legal guardian or Indian custodian and the Indian child's tribe in accordance with section 224.2, subdivision (a)(5), if the Department or court 'knows or has reason to know that an Indian child is involved' in the proceedings. (§ 224.3, subd. (d); see *In re Breanna S.* [(2017)] 8 Cal.App.5th [636,] 649; *In re Michael V.* (2016) 3 Cal.App.5th 225, 232; Cal. Rules of Court, rule 5.481(b)(1) [notice is required '[i]f it is known or there is reason to know that an Indian child is involved in a proceeding listed in rule 5.480,' which includes all dependency cases filed under section 300].)

". . . [A]lthough ICWA itself does not define 'reason to know,' California law, which incorporates and enhances ICWA's requirements, identifies the circumstances that may constitute reason to know the child is an Indian child as including, without limitation, when 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 or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe.' (§ 224.3, subd. (b)(1); see *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 650; accord, *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 232.) [¶] . . . [¶]

"Judicial Council form ICWA-020, Parental Notification of Indian Status, which the juvenile court must order a parent to complete at his or her first appearance in the dependency proceeding (Cal. Rules of Court, rule 5.481(a)(2)), often provides the court and the child protective agency with the first information 'suggesting' or 'indicating' the child involved in the proceeding is or may be an Indian child. But the burden of developing that information does not rest primarily with the parents or other members of the child's family. Juvenile courts and child protective agencies 'have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300 . . . is to be, or has been, filed is or may be an Indian child in all dependency proceedings . . . .' (§ 224.3, subd. (a); see *Isaiah W.*, *supra*, 1 Cal.5th at pp. 9, 10–11; *In re Michael V.*, *supra*, 3 Cal.App.5th at p. 233.) And once the agency or its social worker has reason to know an Indian child may be involved, the social worker is required, as soon as practicable, to interview the child's parents, extended family members, the Indian custodian, if any, and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility. (§ 224.3, subd. (c); *Michael V.*, at p. 233; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1386; see also Cal. Rules of Court, rule 5.481(a)(4)(A).)" (*In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 783–785.)

The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. We review the trial court's findings for substantial evidence, and deficiencies or errors in an ICWA notice are subject to harmless error review. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57.)

B. The Trial Court Erred by Failing to Order DCFS to Give Notice to the Tribes and the BIA

Mother contends DCFS did not conduct an adequate ICWA inquiry in this case because "[t]here is no evidence in the appellate record that the social worker searched for any of Father's relatives or asked anyone else—such as Mother—about contact information for such relatives." Further, mother says, DCFS interviewed father only once about his alleged Indian ancestry and "there is no evidence that the juvenile court ever inquired of Father after Father's initial claim of ancestry at the detention hearing" or provided notice to the Apache or Choctaw tribes.

Having reviewed the appellate record, we conclude that DCFS adequately investigated father's Indian ancestry. Immediately after father advised the court that he might have Indian ancestry through his mother's family, the court asked father whether his parents were still living and whether there were any members of his family who could provide additional information about tribal membership. Father responded that his mother was deceased, he did not know whether his father was still alive, and there were no other family members who could provide additional information about possible tribal eligibility. The court therefore deferred making an ICWA finding and ordered DCFS to follow up with father. A dependency investigator subsequently attempted to interview father about his possible Apache or Choctaw heritage, but the investigator was not able to obtain any additional information because father said all of his relatives had passed away and he did not know their full names or dates of birth. On this record, therefore, DCFS reasonably investigated father's claims of Indian ancestry;

indeed, given the paucity of information father provided, we are hard-pressed to identify any additional steps it could have taken.

We agree with mother, however, that the information father provided was sufficient to trigger ICWA's notice requirements. Father stated that Angel might have Apache or Choctaw ancestry, and he identified a family member he thought might have been Indian. This information was sufficient to invoke ICWA notice requirements, and the juvenile court erred in failing to order that such notice be provided. (See, e.g., *In re B.H.* (2015) 241 Cal.App.4th 603, 607 [ICWA notice requirements were triggered where father, though unable to provide any further information, "specifically reported 'Cherokee' ancestry, through his own father"]; *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 257 [parents' statements that they each may have "Cherokee Indian heritage" was sufficient to trigger ICWA notice provisions].)

DCFS cites several cases for the proposition that ICWA notice is not required by "vague references to Indian ancestry, without more," and it asserts that principle applies here. In each of the cited cases, however, the parents provided far less information than father provided in this case. (E.g., *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467–1469 [ICWA notice not required where mother could not identify a tribe or nation, could not identify any relative who was a tribal member, and could not provide contact information for any relative who could provide more information]; *In re J.D.* (2010) 189 Cal.App.4th 118, 125 [ICWA notice not required where mother could not identify a tribe and said she had no living relatives who could provide additional information]; *In re O.K.* (2003) 106 Cal.App.4th 152, 155–156 [father's statement that he " 'may have Indian in him' "

was too vague and speculative to require ICWA notice].) These cases, therefore, do not control the result in this case.

We therefore conclude that the juvenile court erred in failing to order DCFS to provide ICWA notice to the federally-recognized Apache and Choctaw tribes and the BIA. The termination order thus must be conditionally reversed. (See *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385.) This "does not mean the trial court must go back to square one," but that the court must ensure that the ICWA notice requirements are met. (*In re Suzanna L.* (2002) 104 Cal.App.4th 223, 237; see *In re Francisco W.* (2006) 139 Cal.App.4th 695, 705 ["The limited reversal approach is well adapted to dependency cases involving termination of parental rights in which we find the only error is defective ICWA notice"].) If, after giving proper notice, it finds insufficient evidence that Angel is, in fact, an Indian child, it must reinstate its order terminating parental rights.

DISPOSITION

The order terminating parental rights is conditionally reversed, and the case is remanded to the juvenile court with directions to order DCFS to comply with ICWA's notice provisions as described more fully herein. If, after receiving notice, no tribe indicates Angel is an Indian child within the meaning of ICWA, the juvenile court shall reinstate the order terminating parental rights.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.