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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.D., a Person Coming Under the  
Juvenile Court Law.

B241958  
(Los Angeles County  
Super. Ct. No. CK84716)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.W.,

Defendant and Appellant.

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

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Peter Ferrera, Senior Deputy County Counsel for Plaintiff and Respondent.

## **INTRODUCTION**

The Los Angeles County Department of Children and Family Services (Department) filed a petition under Welfare and Institutions Code section 300, subdivisions (b) and (j)<sup>1</sup> that alleged, as ultimately sustained, that L.W., mother of M.D., III (M.D.), had an unresolved history of substance abuse that compromised her ability to care for M.D., M.D.'s siblings were dependents of the juvenile court due in part to mother's history of substance abuse, and mother had an unresolved history of mental and emotional problems that compromised her ability to care for M.D. when left untreated. On appeal from the juvenile court's order terminating her parental rights pursuant to section 366.26, mother contends that the juvenile court erred in finding that the Indian Child Welfare Act (ICWA or Act) (25 U.S.C. § 1901, et seq.) did not apply to M.D. because M.D.'s father, M.D., II—through whom Indian heritage was claimed—was only an alleged father and because the information concerning father's claim of Indian heritage was too attenuated and vague. Because father was an alleged father who had not established that he was M.D.'s biological father, the juvenile court properly found that the ICWA did not apply. Accordingly, we affirm the order terminating parental rights.

## **BACKGROUND<sup>2</sup>**

In its August 1, 2011, jurisdiction/disposition report, the Department reported that mother and father denied having Indian heritage. Mother and father also denied that they or any family member had lived on a reservation, attended an Indian school, received medical care at an Indian facility, or had been registered with an Indian tribe. The report stated that mother identified father as M.D.'s father. Father accepted paternity of M.D. and stated that his name was on M.D.'s birth certificate. Father filed a Statement

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<sup>1</sup> All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

<sup>2</sup> Because the sole issue mother raises on appeal concerns the application of the ICWA, we limit our factual background to matters bearing on that issue.

Regarding Parentage in which he stated his belief that he was M.D.'s father and requested that the juvenile court enter a judgment of parentage.

At a hearing on August 1, 2011, mother stated that father was M.D.'s biological father, but that his name was not on M.D.'s birth certificate. Mother and father were not married. Father acknowledged that he had not signed a paternity declaration in the hospital. The juvenile court found father to be an alleged father.

Also at the hearing, mother's attorney stated that "there is no American Indian heritage." Father's attorney stated that father indicated that he might have Blackfoot<sup>3</sup> ancestry. Father's belief that he might have Indian ancestry "largely" came from paternal grandmother. Paternal grandmother was present, and the juvenile court asked her the source of her belief that her family might have Indian heritage. She said her belief came from conversations with her father who said that his grandmother may have had Indian heritage. Father, paternal grandmother, and paternal great grandfather were not registered with any Indian tribe. The juvenile court found there was no reason to know at that time that the ICWA applied to M.D. and ordered the Department to perform a full investigation of father's claim of Indian heritage and to report its results to the court.

On January 4, 2012, the Department reported that an investigator interviewed father the previous July about possible Indian heritage. Paternal grandmother was present. Father and paternal grandmother denied that they or any other family member had lived on a reservation, attended an Indian school, received medical care at an Indian facility, or had been registered with an Indian tribe. On August 4, 2011, the investigator left a telephone message for paternal grandmother seeking to interview her about alleged Indian heritage. The Department concluded that it had no reason to believe that the ICWA applied to M.D.

At the January 4, 2012, hearing, the juvenile court stated that the Department's ICWA investigation, consisting of placing one telephone call in four months to the

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<sup>3</sup> At various times, father claims affiliation with the Blackfoot and Blackfeet tribes. The Blackfeet—and not Blackfoot—tribe, is a federally recognized tribe and thus subject to the notice provisions of the ICWA. (74 Fed.Reg. 40219 (Aug. 11, 2009).)

paternal grandmother, was inadequate. The juvenile court stated that the Department's July 2011 interview was incomplete because it only addressed whether any family members had lived on a reservation, attended an Indian school, received medical care at an Indian facility, or had been registered with an Indian tribe. The juvenile court ordered the Department to conduct a complete investigation of possible Indian heritage, including interviews of father and paternal grandmother.

In its April 9, 2012, section 366.26 report, the Department reported that an investigator spoke with mother on February 21, 2012, and mother said that she had no knowledge of Indian heritage in her or father's family. The same day, the investigator spoke with paternal grandmother who stated that she was unsure how her family had Indian heritage, but she recalled her father talking about the family "having Indian" in it. The investigator asked for her father's name and telephone number so she could contact him directly about any Indian heritage. Paternal grandmother declined to provide contact information for her father, stating that she would obtain any information concerning Indian heritage from him. The investigator told paternal grandmother that it was important that she ask her father about names, dates of birth, and any other information about family members who had Indian heritage or who had lived on a reservation, attended an Indian school, received medical care at an Indian facility, or had been registered with an Indian tribe. The investigator requested paternal grandmother to obtain from her father family genealogical information for as far back as he could remember.

Two days after paternal grandmother spoke with the Department investigator, she provided the investigator with additional information about M.D.'s possible Indian heritage. Paternal grandmother stated that paternal great grandfather, whom she identified by name, said that he believed that his mother, whom he identified by name, once said that she had Indian heritage. Paternal great grandfather believed that the family was affiliated with the "Sheyenne" and Blackfeet Indian tribes. He did not know his grandparents and was unaware of any family member who had lived on a reservation, attended an Indian school, received medical care at an Indian facility, or had been

registered with an Indian tribe. Paternal great grandfather's father was referred to as "Big Papa."

Paternal grandmother had not asked paternal great grandfather about his or his mother's date or place of birth, but believed that the family was from Texas. Paternal grandmother again declined the investigator's request for contact information for her father, stating that she would obtain the "needed information." As of April 9, 2012, paternal grandmother had not provided the investigator with any additional information concerning M.D.'s Indian heritage. Based on the information it had, the Department concluded that there was no reason to believe that M.D. had Indian heritage.

At the June 8, 2012, contested section 366.26 hearing, the juvenile court found that there was no reason to believe that the ICWA applied. The juvenile court ruled that because father was an alleged father, the ICWA did not apply to M.D. Even if the ICWA applied, the juvenile court ruled, the only information gained from the Department's investigation was that M.D.'s paternal great great grandmother once stated that she had Indian heritage and paternal great grandfather believed that the family was affiliated with the Cheyenne or Blackfeet tribes. Father's family members did not provide any names or indicate that any family member was registered with a tribe. The information provided, the juvenile court found, was "too attenuated and vague" for it to find that M.D. fell under the ICWA. The juvenile court terminated parental rights.

## **DISCUSSION**

### **The Juvenile Court Properly Found That The ICWA Did Not Apply Because Father Was As An Alleged Father Who Had Not Established Biological Parentage**

Mother contends that the juvenile court erred in finding that the ICWA did not apply because father was an alleged father. Mother acknowledges that biological paternity was not established, but argues that the juvenile court had reason to believe father was M.D.'s biological father because mother informed the juvenile court that father was M.D.'s biological father and father "accepted paternity of the child."

“In 1978, Congress passed the Act, which is designed to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children ‘in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.’” (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 734, quoting 25 U.S.C. § 1902.) The Act “sets forth the manner in which a tribe may obtain jurisdiction over proceedings involving the custody of an Indian child, and the manner in which a tribe may intervene in state court proceedings involving child custody. When the dependency court has reason to believe a child is an Indian child within the meaning of the Act, notice on a prescribed form must be given to the proper tribe or to the Bureau of Indian Affairs, and the notice must be sent by registered mail, return receipt requested. [Citations.]” (*In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 906.)

The “ICWA defines ‘Indian child’ as ‘any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe[.]’ (25 U.S.C. § 1903(4).) The necessity of a biological tie to the tribe is underlined by the ICWA definition of a ‘parent’ as ‘any biological parent or parents of an Indian child . . . .’ (25 U.S.C. § 1903(9).) [¶] An alleged father may or may not have any biological connection to the child. Until biological paternity is established, an alleged father’s claims of Indian heritage do not trigger any ICWA notice requirement because, absent a biological connection, the child cannot claim Indian heritage through the alleged father.” (*In re E.G.* (2009) 170 Cal.App.4th 1530, 1533.)

The juvenile court found father to be an alleged father. Mother acknowledges that father’s biological paternity of M.D. was not established. Because the ICWA notice requirements are not triggered until the biological paternity of an alleged father is established, the juvenile court did not erred in finding that the ICWA did not apply. (*In*

*re E.G., supra*, 170 Cal.App.4th at p. 1533.)<sup>4</sup> Mother’s claim that the juvenile court had reason to believe that father was M.D.’s biological father is unavailing because “until biological paternity is established for an alleged father who claims Indian heritage, neither the court nor the social worker knows or has reason to know that an Indian child is involved and notice requirements are not activated. [Citation.]” (*Ibid.*)

### **DISPOSITION**

The order terminating mother’s parental rights is affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.

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<sup>4</sup> Based on our holding that the juvenile court did not err in finding that the ICWA did not apply because father was an alleged father whose biological paternity to M.D. was not established, we need not address mother’s other claim that the juvenile court erred in finding that the ICWA did not apply because the information concerning father’s claim of Indian heritage was too attenuated and vague.