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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Autumn L., a Person Coming Under the Juvenile Court Law.	B290082 (Los Angeles County Super. Ct. No. DK18992)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Rashida A. Adams, Judge. Affirmed.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * * *

B.C. (mother) argues that the juvenile court's order terminating her parental rights over her daughter Autumn L. (Autumn) is invalid because the court did not comply with the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq. (ICWA)). Although the court did err in some respects, those errors are harmless. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Generally

Mother gave birth to Autumn in mid-August 2016. Two weeks earlier, Mother had gone to the same hospital where Autumn was born due to injuries inflicted upon her by A.L. (father).

On August 30, 2016, the Los Angeles County Department of Children and Family Services (the Department) filed a petition asking the juvenile court exert dependency jurisdiction over Autumn on the ground that father and mother had a "history of engaging in violent physical and verbal altercations" that (1) placed Autumn at "substantial risk" of "serious physical harm inflicted nonaccidentally" (rendering dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (a)),[1] and (2) constituted a "failure to" "adequately . . . protect" Autumn, which also placed her a "substantial risk" of "serious physical harm" (rendering

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

dependency jurisdiction appropriate under section 300, subdivision (b)(1)).

On October 11, 2016, the juvenile court held a jurisdictional hearing, sustained both allegations in the petition, and exerted dependency jurisdiction over Autumn.

On November 15, 2016, the court held a dispositional hearing, at which time it removed Autumn from both parents' custody and ordered family reunification services.

The juvenile court conducted a six-month review hearing on July 11, 2017, and at that hearing, terminated reunification services and scheduled a hearing regarding the termination of parental rights.

On May 8, 2018, the juvenile court terminated mother's and father's parental rights over Autumn.

II. Specifically, as to ICWA

On August 24, 2016, mother reported that she had no "Native Indian Ancestry."

Six days later, on August 30, 2016, mother filed a Parental Notification of Indian Status stating that she "[was] or may be a member of, or eligible for membership in, a federally recognized Indian tribe." Mother listed the "Chactow [*sic*]" tribe.

At the hearing on August 30, 2016, the juvenile court ordered the Department to investigate mother's claim of ties to the Choctaw tribe. In response to the court's further questioning, mother stated that father had no Indian ancestry. Father later reaffirmed that he had no Indian ancestry.

The Department spoke with mother, who indicated that her paternal grandmother (that is, Autumn's paternal great-grandmother) was named Vonda S. and was registered with a Choctaw tribe. Mother reported that neither she nor her father

(Vonda's son) were registered with any tribe. Mother provided Vonda's telephone number. Mother's godmother later reported that she had heard that mother's paternal grandmother was from the Choctaw tribe.

The Department placed calls to Vonda several times on multiple days, all to no avail, because Vonda did not answer the phone and had no voicemail.

On September 14, 2016, mother told the Department—consistent with her initial statement, but inconsistent with her subsequent statement—that she "does not know of any Native Indian ancestry."

Notwithstanding mother's vacillating responses, the Department on September 24, 2016, mailed a Notice of Child Custody Proceeding for Indian Child to mother, to father, to the Bureau of Indian Affairs, to the Secretary of the Interior, and to all three Choctaw tribes—namely, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, and the Mississippi Band of Choctaw Indians. The Notice listed Autumn's name and date of birth; mother's and father's names and current addresses, but not their dates of birth; mother's mother's name, but no further information; and Vonda's name, but no further information. The Notice also listed as "Unknown" the biographical information about all other relatives. The Department official who mailed the notice certified that she mailed the Notices to each of the above stated recipients "in an envelope with postage for registered or certified mail, return receipt requested, fully prepaid."

In late October 2016, the Mississippi Band of Choctaw Indians responded that Autumn, mother, and Vonda were neither enrolled in the tribe nor eligible for enrollment.

The minute order from the November 15, 2016 dispositional hearing did not contain any findings regarding ICWA.

The minute order for the July 11, 2017 six-month review hearing stated that the November 15, 2016 minutes contained a "clerical error" and should be amended nunc pro tunc to indicate that the court, at that time, did "not have a reason to know that [Autumn] is an Indian child . . . and does not order notice to any tribe or the [Bureau of Indian Affairs]."

DISCUSSION

ICWA was enacted to curtail "the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement." (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32.) To further this goal, ICWA—and the California statutes that implement it—impose several duties upon juvenile dependency courts. Among those duties is a juvenile court's duty, whenever it "knows or has reason to know that an Indian child is involved" in a proceeding before it, to "notify" (1) "the parent or Indian custodian," and (2) either (a) "the Indian child's tribe," if it is known, or (b) the Secretary of the Interior and the Bureau of Indian Affairs, if the tribe is unknown. (25 U.S.C. § 1912(a); see also 25 U.S.C. § 1903(11); §§ 224.2, subd. (a)(4) & 224.3, subd. (d).) A child is an "Indian child" if he or she is either (1) "a member of an Indian tribe," or (2) "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); § 224.1, subd. (a).) Notice to the tribe enables the tribe to decide whether the child is in fact an Indian child, and the tribe's determination is conclusive. (§ 224.3, subd. (e)(1); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165.)

The notice sent to the tribes and/or federal agencies must meet certain minimum requirements. It must be "sent by registered or certified mail with return receipt requested." (§ 224.2, subd. (a)(1).) It must also contain, among other things, "[a]ll names known of the Indian child's biological parents, grandparents, and great-grandparents, or Indian custodians, . . . as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, *if known*." (§ 224.2, subd. (a)(5)(C), italics added.) "[C]opies of notices sent and all return receipts and responses received" must thereafter "be filed with the court" (§ 224.2, subd. (c); Cal. Rules of Court, rule 5.482(b)), and the juvenile court must give the tribes at least 60 days to respond to the notice (Cal. Rules of Court, rule 5.482(c)(1); *In re O.C.* (2016) 5 Cal.App.5th 1173, 1188).

We review the factual question of whether ICWA notice is required for substantial evidence. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467.) We review compliance with the minimum notice requirements independently, at least where, as here, the facts are undisputed. (*In re J.L.* (2017) 10 Cal.App.5th 913, 917-918.)

Mother asserts that the juvenile court's compliance with the ICWA notice requirements was deficient for three reasons.[2] We consider each in turn.

First, mother asserts that the content of the Notice sent by the Department was deficient because it omitted some

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[2] Mother initially articulated a fourth reason (namely, that the Department used the wrong mailing address when sending the Notice to the Choctaw Nation of Oklahoma), but mother subsequently withdrew that argument.

biographical details of which the Department had knowledge—namely, mother's and father's dates of birth as well as information that may have been available in the Department's archives (such as Autumn's maternal grandmother's date of birth and address). We agree with mother that the Notice was deficient to the extent that it omitted information the Department undoubtedly possessed.

However, deficiencies in an ICWA notice can be harmless (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 652-653), and in this case they were. According to mother and mother's godmother, the only person with any link to any Choctaw tribe was Autumn's paternal great-grandmother, Vonda. Importantly, the Notice contained every biographical detail the Department had managed to acquire regarding Vonda after exhausting its efforts to locate and then contact her. Under these circumstances, the omission of information about mother's father's side of the family was harmless. Similarly harmless was the omission of information about mother and mother's father (Vonda's son), as neither of them were members of any tribe. Mother urges that this case is akin to *In re D.T.* (2003) 113 Cal.App.4th 1449, but the notice in that case was sent to the Bureau of Indian Affairs with just the names and dates of birth of the child and immediate parents, without any further details regarding the extended family or any possible tribe. To be sure, the purpose of ICWA notice is to provide "enough information to constitute meaningful notice" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 175 (*Karla C.*)), and providing just the parents' names with no further relatives and no tribe information was too scant to be "meaningful." (*In re D.T.*, at p. 1455.) But in this case the Department directed the Notice to the specific tribes to which Autumn was possibly linked

(that is, the three Choctaw tribes) and included all of the information it knew about the only relative with the link to those tribes. The Department's failure to include information it possessed about other relatives was harmless.

Second, mother contends that there was insufficient proof that a copy of the Notice the Department mailed was ever filed with the juvenile court—and, consequently, insufficient proof that the juvenile court ever *considered* that Notice when assessing whether the Department had complied with ICWA. To be sure, it is critical for a juvenile court to have access to the Notice actually mailed in a case in order to "determine whether [the Notice] complie[s]" with ICWA. (*Karla C.*, *supra*, 113 Cal.App.4th at p. 178.) However, the record establishes that the Notice was before the juvenile court because it was appended to a Departmental report that the juvenile court admitted into evidence at the dispositional hearing. Mother latches on to the fact that the Notice was not file stamped by the clerk, but file stamping is neither a requirement of ICWA (or its state equivalent) nor a prerequisite to a finding that a document has been filed with a court (see, e.g., *People v. Hames* (1975) 54 Cal.App.3d 40, 43; *Industrial Indem. Co. v. Industrial Acc. Com.* (1949) 95 Cal.App.2d 443, 453). Because the Notice was part of the juvenile court's file, we presume that the court "regularly performed" its "official duty" in considering the Notice as the law requires. (Evid. Code, § 664; *In re Julian R.* (2009) 47 Cal.4th 487, 498-499.) Mother has introduced no evidence to rebut that presumption.

On a related note, we observe that the juvenile court's July 2017 nunc pro tunc order regarding ICWA compliance contains factual and legal errors, although those errors are harmless. The

nunc pro tunc order is factually incorrect insofar as it states that the court did not have "reason to know that [Autumn] is an Indian child" and "does not order notice to any tribe or the" Bureau of Indian Affairs because mother's report of possible Choctaw heritage created reason to believe Autumn was an Indian child (e.g., *In re D.C.* (2015) 243 Cal.App.4th 41, 62-63) and because the Department had, by November 2016, already sent the Notice. But this error is harmless because, as noted, the Department did, in fact, give such notice. The nunc pro tunc order is legally incorrect to the extent it is meant to constitute a finding that Autumn is not an "Indian child" due to the responses from the three Choctaw tribes. A juvenile court may make such a finding only if a tribe has actually responded to the Notice (as did the Mississippi Band of Choctaw Indians) or if a tribe has not responded more than 60 days after the Notice was sent (§ 224.3, subd. (e)(3); Cal. Rules of Court, rule 5.482(c)(1)). If the July 2017 order is given nunc pro tunc effect back to November 15, 2016, that date is less than 60 days after the Department mailed the notices on September 24, 2016. However, this error is also harmless because the juvenile court's nunc pro tunc order was not entered until July 11, 2017—and, by that time, 60 days *had* elapsed since September 24, 2016, and the Department and court had not received responses from the remaining two tribes.

Third, mother argues that the proof of mailing was insufficient because the Department did not file the return receipts with the juvenile court. This is required, and the Department's failure to do so was error. However, that error was harmless because (1) the Department official who mailed the Notice certified that she sent the notices "in an envelope with postage for registered or certified mail, return receipt requested,

fully prepaid," and (2) at least one of the tribe-recipients received the mailing and responded. The same facts were true in *In re S.B.* (2009) 174 Cal.App.4th 808, 812-813, and the failure to file the return receipts was deemed to be harmless. Mother protests that the two other Choctaw tribes did not respond, but *In re S.B.* rejected an identical argument because "[n]othing in the record suggest[ed] . . . why[] the social worker would have performed her duty to send ICWA notice to some of the listed tribes, but neglected to send notice to the others." (*Ibid.*) The same is true here.

DISPOSITION

The juvenile court's order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST