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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ANGELA D.,

Petitioner,

SUPERIOR COURT, COUNTY OF
SANTA BARBARA,

Respondent;

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Real Party in Interest.

2d Juv. No. B247089
(Super. Ct. Nos. J-1300277, J-1300278,
J-1300279, J-1300280)
(Santa Barbara County)

Petitioner Angela D. (mother) seeks extraordinary writ review (Cal. Rules of Court, rule 8.452) of the juvenile court's February 19, 2013 order, terminating mother's reunification services and setting a Welfare and Institutions Code section 366.26¹ permanency planning hearing as to her children, Daisy M., Destiny G., Danielle O., and Dominic O. Mother contends that the court failed to comply with the Indian Child Welfare Act, title 25 of the United States Code section 1912(d) (ICWA), because it did not require the Santa Barbara County Child Welfare Services (CWS) to make

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

adequate inquiry regarding the children's Indian Ancestry; it did not comply with every rule concerning certain forms; and it failed to obtain further information concerning the claimed paternity status of the alleged father of Danielle and Dominic. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On November 2, 2011, CWS removed 9-year-old Daisy G., 7-year-old Destiny G., and 4-year-old twins Danielle O. and Dominic O. from mother's care and placed them in an emergency shelter home. On November 7, 2011, it filed a section 300 petition alleging that officers found heroin residue within the children's reach in mother's home; mother injured Danielle; mother had a criminal record; and CWS had received eight prior abuse and neglect referrals concerning the children.

Prior to the detention hearing, mother advised the CWS social worker that Victor G. is the biological father of Daisy and Destiny, and that Steve O. is the biological father of Danielle and Dominic. She also advised the social worker that the children have no Indian ancestry. During juvenile court proceedings on November 8, 2011, mother advised the court that neither she, nor Steve O., nor Victor G. has any Indian ancestry.

In its November 30, 2011 jurisdiction report, CWS stated that its social worker spoke with Steven O. He explained that he took a paternity test in South Dakota around the time that Danielle and Dominic were born, and he is their biological father. He never met the children and did not want to "deal with the mother in order to be part of their lives." Steven O. told the social worker that Danielle and Dominic do not have any Indian ancestry. Victor G., the father of Daisy and Destiny, was in federal custody in 2011. He wrote to CWS and requested that Daisy and Destiny be placed with his parents, and CWS placed them there. Victor G. was later deported to Mexico.

CWS gave Victor G. and Steven O. notice of the hearings below, including the 12-month review hearing. They did not appear.

DISCUSSION

In seeking relief, mother argues that CWS failed to make adequate inquiry regarding the children's Indian ancestry. She cites the absence of completed ICWA forms on file (e.g., the IWCA-020) and similar errors. Mother is not entitled to relief.

The juvenile court and CWS have an affirmative and continuing duty to inquire at the outset of the proceedings whether any child subject to the proceedings was, or might be, an Indian child. (§ 224.3, subd. (a); Cal. Rules of Court, rule 5.481(a).) As part of its duty, the court must "order the parent" to complete form ICWA-020 at the first appearance by the parent in the juvenile proceedings in which the child is at risk of entering foster care. (Cal. Rules of Court, rule 5.481(a)(2).)

In this case, mother not only made no affirmative representation of Indian ancestry in the juvenile court or on appeal, but also told the social worker and the juvenile court that neither she nor Victor G. nor Steve O. had any such ancestry. She consistently reported to CWS and to the juvenile court that neither the children, nor their respective fathers, have Indian ancestry. Steven O., alleged father of Danielle and Dominic, advised CWS that they have no Indian ancestry.

Although Victor G. communicated his preference regarding the placement of his children to CWS, the record does not indicate that CWS asked him to complete the ICWA-020 form, or asked him whether Daisy or Destiny had any Indian heritage. However, mother has failed to show by offer of proof or other affirmative assertion of Indian heritage, in the juvenile court or this court, that prejudice resulted from any error associated with the ICWA investigation or notice procedures. (See *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 942-943 [in the absence of any evidence to support a reasonable inference child might have Indian heritage, no requirement to make further or additional inquiries]; *In re H.B.* (2008) 161 Cal.App.4th 115, 121-122 [technical noncompliance with ICWA notice procedures excused where parents denied Indian ancestry]; *In re N.E.* (2008) 160 Cal.App.4th 766, 769-770 [where parents do not claim Indian ancestry, failure to comply with ICWA notice procedures was harmless error].)

Mother also made no showing of prejudice with respect to her claim that the court erred by failing to demand further information regarding the paternity status of Steven O.

DISPOSITION

The petition is denied.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Thomas R. Adams, Judge
Superior Court County of Santa Barbara

Terrence L. Lammers, for Petitioner.

Dennis A. Marshall, County Counsel, Gustavo E. Lavayen, Chief Deputy
County Counsel, for Respondent.