Filed 4/12/19 In re L.R. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.R., a Person Coming Under the Juvenile Court Law.	B290533
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 18CCJP01397)

APPEAL from an order of the Superior Court of Los Angeles County. Natalie P. Stone, Judge. Dismissed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother, L.S. appeals the jurisdiction and disposition findings relating to her daughter, L.R. who was declared dependent and placed with father, R.R. Mother's sole contention on appeal is that the court failed to properly investigate her claims of Native American ancestry within the meaning of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). However, while this appeal was pending, the trial court terminated jurisdiction, with the child placed in the legal and physical custody of father. As the child remains in the custody of a parent, there can be no remedy for any possible ICWA violation. We therefore dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

At the time the petition was filed in this case, the child was living with father. A prior petition, based on mother's drug use, had been sustained in 2011, which resulted in father obtaining sole physical and legal custody of the then two-year-old child. Mother's other two children, who had different fathers, were placed in legal guardianship.

On March 2, 2018, the Department of Children and Family Services (the Department) filed the petition in this matter, alleging that the now eight-year-old child was dependent under Welfare and Institutions Code section 300, subdivision (b) due to her father's drug use. Specifically, father had driven a vehicle while under the influence of methamphetamine while the child was a passenger.

Father admitted having made a "huge mistake." He enrolled in parenting classes and therapy. He drug tested, and, after an initial positive test, his tests were negative.

When mother first appeared in court, she represented that she did not feel that she was able to take the child, but requested some of her relatives be investigated for possible placement.

At the adjudication hearing, father pled no contest to the petition as amended. The petition was sustained. Father continued to test clean and attended 12-step meetings. His visits were consistent and positive. The Department liberalized father's visits to overnight weekends; and, when that was successful, the child was released to father's home under the Department's supervision.

At the disposition hearing, the court ordered the child placed with father, with family maintenance services. Mother conceded that because the child was to be released to father, reunification services were inappropriate, but she sought "enhancement services" and visitation. The court concluded that mother was not entitled to services, because she had failed to reunify with the child's half-siblings and had not made a reasonable effort to treat the problems that had led to the removal of the half-siblings. (Welf. & Inst. Code, § 361.5, subd. (b)(10).)

Mother filed a timely notice of appeal. In her opening brief, she explained that the "sole issue" she raised was a failure to comply with ICWA. Specifically, although mother had claimed Apache and/or Cherokee ancestry, she argued the Department failed to notice those tribes.[1] Prior to her appeal, mother had declined to assist the Department in its efforts to comply with ICWA, taking the position that "the tribes are not going to help her and she does not see the purpose of noticing the tribes." The

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[1] The record shows the appropriate notice was prepared, but the copy in the record is not signed, nor is the proof of service.

Department had unsuccessfully attempted to obtain the necessary information from other maternal relatives.

While mother's appeal was pending, jurisdiction was terminated, with father granted legal and physical custody of the child. We asked the parties whether we should take judicial notice of these orders and, further, whether the orders rendered mother's appeal moot. Neither mother nor the Department responded to our request.

DISCUSSION

We take judicial notice of the court's orders of January 18, 2019, terminating jurisdiction and awarding custody to father.

When, pending an appeal, without fault of the respondent, an event occurs which renders it impossible for the court, if it decides the case in favor of appellant, to grant any effectual relief, the appeal becomes moot. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316.) ICWA notice is required when a hearing may culminate "in an order for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement." (Welf. & Inst. Code, § 224.3, subd. (a).) Here, the proceedings have terminated. The dependency court no longer has jurisdiction over the child, and her custody has been returned to father. Even if mother is correct and ICWA notice should have been given to the tribes, there is no effective relief that can be granted. Mother's appeal must therefore be dismissed as moot.[2]

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[2] Mother argues on appeal that mere placement with a parent does not absolve the Department of its ICWA obligations, citing *In re Jennifer A.* (2002) 103 Cal.App.4th 692. The Department counters with two more recent cases (*In re M.R.*

DISPOSITION

Mother's appeal is dismissed as moot.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.

(2017) 7 Cal.App.5th 886, 903-904; *In re K.L.* (2018) 27 Cal.App.5th 332, 336) which hold that no ICWA inquiry is required when placement is with a parent. We need not inject ourselves in this debate, as none of these cases deals with an award of custody to a parent as part of an order terminating dependency jurisdiction, thus rendering further relief impossible.