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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JAMES C., a Person Coming Under the Juvenile Court Law.	B279117 (Los Angeles County Super. Ct. No. DK07418)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. AMBER C., Defendant and Appellant.	

APPEAL from an order of the Superior Court for Los Angeles County, Margaret S. Henry, Judge and Anthony Trendacosta, Commissioner. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

Amber C. (mother) appeals from the order of the juvenile court terminating her parental rights to her son, James C. Mother's only contentions on appeal relate to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1900 et seq.). Mother contends the juvenile court committed reversible error by not making an ICWA finding, and that even if the court did find that ICWA did not apply, that finding is not supported by substantial evidence. We conclude the trial court made a finding that ICWA did not apply, which was supported by substantial evidence. Accordingly, we affirm the order terminating parental rights.

BACKGROUND

Because the only issues on appeal relate to the applicability of ICWA, we limit our discussion of the background of this case to the facts relevant to the ICWA issues.

The Los Angeles County Department of Children and Family Services (the Department) filed a dependency petition alleging a single count under Welfare and Institutions Code section 300, subdivision (b).[1] The Department alleged that mother had mental and emotional problems, including a diagnosis of depression, which rendered her incapable of providing regular care for James. At the time of filing, James was two years old and lived with mother; his father was deceased.

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

At the detention hearing, held on September 18, 2014, mother filed a "Parental Notification of Indian Status" form. She checked the box stating "I may have Indian ancestry," and identified the tribes as "Blackfoot" and "Cherokee." At the start of the hearing, the juvenile court (Hon. Anthony Trendacosta, Temporary Judge) noted the filing of the form and identification of the two tribes and asked, "Ma'am, are you or any other relatives registered members of any tribe or tribes?" Mother responded, "Not that I am aware of." The court asked mother whether her parents, grandparents, or great-grandparents were members of any tribe or if they ever resided on an Indian reservation. Mother shook her head "No." The court then asked, "What information specifically do you have with respect to Indian heritage?" Mother responded, "I don't know. Just my mom."

The maternal grandmother, who attended the hearing, told the court: "There is some Indian blood, but not enough to be registered with a tribe." The court asked, "But you were advised through family folklore whatever that you have Indian heritage?" The maternal grandmother said, "No." The court turned to mother's counsel, noted that "somebody wrote down here 'Blackfoot' and 'Cherokee' heritage," and asked if counsel could provide any assistance. Counsel said that "[her] client believes, through representations made by her family, that there is some Native American ancestry."

The court concluded its discussion of ICWA by stating: "All right. Well, I'd be ordering the Department to further interview the grandparents, please, with respect to the Indian heritage, whatever it might be. And based upon that interview, determine whether or not

there needs to be -- there's sufficient information to lead the court to believe or know that [ICWA] is involved. And if so, then [the] Department is to notice the Cherokee tribes or the Blackfeet tribe or tribes and the Bureau."

The detention hearing proceeded. The juvenile court found a prima facie case for detaining James and ordered him detained with the maternal grandmother. With regard to ICWA, the minute order from the detention hearing stated: "The Court does not have a reason to know that this is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs]. Parents are to keep the Department, their Attorney and the Court aware of any new information relating to possible ICWA status. JV-020, the Parental Notification of Indian Status is signed and filed."

In the jurisdiction/disposition report filed a month later, the Department reported that the dependency investigator/social worker interviewed the maternal grandmother by telephone regarding the family's Indian heritage. The maternal grandmother told the social worker: "We do have some American Indian Heritage but it's so far removed that I wouldn't be able to give you any information. Honestly it would be a waste of time for the Department to try and look into this matter. If we had any rights from a tribe, trust me I would have looked into it already."

The jurisdiction and disposition hearings were held on October 23, 2014. Mother waived her rights and pleaded no contest to the petition, which the court sustained. The court declared James a dependent child of the court and ordered him placed in "home of parent-mother," with

family maintenance services, on the condition that mother resided with the maternal grandfather. ICWA was not discussed at the hearing.

A month later, the Department filed a supplemental petition under section 387, alleging that mother was not residing with the maternal grandfather in violation of the juvenile court's order, she had missed court-ordered counseling sessions, and she minimized her mental health issues, all of which endangered James's physical health and safety. In the report filed for the detention hearing, the Department stated: "The Indian Child Welfare Act does not apply." At the hearing, the court ordered James detained with the maternal grandmother.

In the jurisdiction/disposition report for the section 387 petition, the Department reported that "[o]n 09/18/14, the Court found that the Indian Child Welfare Act does not apply." The juvenile court adjudicated the section 387 petition; it sustained the petition, terminated the "home of parent-mother" order, removed James from mother's custody, and placed him with the Department for suitable placement.

The juvenile court held a contested six-month review hearing in November 2015, and an 18-month review hearing in May 2016, which

was continued to June 2016 for a contested hearing.[2] All of the reports submitted for those hearings stated that ICWA did not apply. At the contested 18-month review hearing, the juvenile court terminated family reunification services and set the matter for a section 366.26 permanent plan hearing. At the section 366.26 hearing, the court found that James was likely to be adopted, that returning him to mother's custody would be detrimental to him, and that no exception to adoption applied. The court terminated mother's parental rights and ordered a permanent plan of adoption.

Mother timely filed a notice of appeal from the order terminating parental rights.

DISCUSSION

"ICWA reflects a congressional determination that it is in the best interests of Indian children to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations. [Citations.] It is intended to protect Indian children and to promote the stability and security of Indian tribes and families. [Citations.]" (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1385.) An "Indian child" is defined in ICWA as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for

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[2] Mother did not appear at the originally scheduled 18-month review hearing. Before the continued hearing, the Department reported that early in the morning on the day of the original hearing mother was arrested for driving under the influence of alcohol. The Department also reported that mother originally told the social worker that she missed the court hearing due to an allergic reaction that required her to go to the emergency room.

membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); see also § 224.1, subd. (b) [definition under California law].)

"ICWA provides, 'In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe' of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); see *In re S.B.* (2005) 130 Cal.App.4th 1148, 1157.) Similarly, California law requires notice to the 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). The circumstances that may provide reason to know the child is an Indian child include, without limitation, when 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 parents, grandparents or great-grandparents are or were members of a tribe. (§ 224.3, subd. (b)(1).)" (*In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1385-1386.)

Mother raises two issues related to ICWA. First, she contends the juvenile court committed reversible error by not making an ICWA finding. Second, she contends that if the court found that ICWA did not apply, its finding was not supported by substantial evidence because there was evidence before the court that mother's family had Indian

heritage, and therefore the Department was required to give notice under ICWA. Neither contention prevails.

A. *The Juvenile Court Made an ICWA Finding*

In her opening brief, mother notes that at the original detention hearing, the juvenile court questioned mother and the maternal grandmother about the ICWA form mother had submitted and, based upon that discussion, ordered the Department to further interview the grandparents about potential Indian heritage and determine if there was sufficient information to require that ICWA notices be sent. Mother contends that because the court ordered a further investigation, it did not make a finding that ICWA did not apply. Therefore, she asserts that the Department's subsequent statement in its report prepared for the section 387 petition jurisdiction/disposition hearing that the court found in September 2014 that ICWA did not apply was incorrect. We disagree.

In its minute order from that September 2014 hearing, the court stated: "The Court does not have a reason to know that this is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs]." In other words, the court necessarily found, *based upon the information presented at the detention hearing*, that ICWA did not apply because it had no "reason to know that an Indian child is involved." (25 U.S.C. § 1912(a).) Because there was some confusion, however, the court ordered the Department to follow up to see if there was any additional information that would give

it reason to know that James was an Indian child. The Department did so, and determined there was no such additional information.

B. *The Juvenile Court's Finding That ICWA Did Not Apply Was Supported by Substantial Evidence, and ICWA Notice Was Not Required*

Mother argues, in essence, that the juvenile court could not find that ICWA did not apply because mother (and the maternal grandmother) claimed to have Indian ancestry. Therefore, mother asserts, the court was required to order that ICWA notice be given to the identified tribes. Without the giving of such notice and receipt of the tribes' responses, she contends there could not be substantial evidence to support a finding that ICWA did not apply. Under the circumstances presented here, we disagree.

Mother is correct that when a parent or extended family member asserts Indian ancestry, the duty to provide ICWA notice may arise because that assertion may give the juvenile court reason to suspect the child is an Indian child. (See, e.g., *Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 254-257.) But the assertion of Indian ancestry will not trigger the duty to provide ICWA notice where additional information is provided that indicates that the child does not meet the definition of Indian child, even though the child has Indian ancestry. As one court observed, "ICWA defines an 'Indian child' as a child who is either (1) 'a member of an Indian tribe' or (2) 'eligible for membership in an Indian tribe and . . . the biological child of a member of an Indian tribe.' (25 U.S.C. § 1903(4).) Conversely, if the child is not a tribe member, and the mother and the biological father are not tribe

members, the child simply is not an Indian child." (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520.)

In this case, the maternal grandmother's responses to the juvenile court's questions at the detention hearing and to the social worker's follow-up interview indicate that James cannot meet the definition of Indian child. Although the maternal grandmother told the court that she had "some Indian blood," she said that it was "not enough to be registered with a tribe." She then told the social worker that "[i]f we had any rights from a tribe, trust me I would have looked into it already." From these statements, the juvenile court reasonably could infer that the maternal grandmother and/or other members of the extended family had sought to register with a tribe, but were found not to be eligible for membership. It stands to reason, then, that neither mother nor James, who are one and two additional generations removed, are eligible for membership.[3] Therefore, the court reasonably concluded that James was not an Indian child and ICWA did not apply.

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[3] We recognize that the determination of tribal membership belongs to the tribe. (See, e.g., *In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1386-1387.) But we may infer that the tribe, having made that determination for previous generations, would make the same determination for later generations.

DISPOSITION

The order terminating parental rights is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.