Filed 4/11/18 In re S.S. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S. S. , a Person Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. STEPHEN S. et al., Defendants and Appellants.	B283320 (Los Angeles County Super. Ct. No. DK13168)

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant Stephen S.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant J.G.

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

INTRODUCTION

Appellants Stephen S. (father) and J.G. (mother) (collectively parents) appeal from the juvenile court's order terminating their parental rights on the sole ground the notice and inquiry provisions required by the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and related California law were insufficient. Father contends respondent Los Angeles County Department of Children and Family Services (the Department) provided defective notice under ICWA when it listed the paternal great-grandfather in the incorrect location on the required form. Father also contends the Department failed in its "continuing duty" of inquiry under California law when mother notified the juvenile court after the hearing on termination of parental rights had been set that she "may have American Indian heritage" and wanted to ask her grandparents. Mother joins in father's arguments and contends that, if this court reverses the judgment terminating father's parental rights, it must reverse the judgment terminating her parental rights as well, even though it is the father through whom the child may have ICWA status.

We conclude substantial evidence supports the juvenile court's finding ICWA did not apply. Any defects in the ICWA notice were not prejudicial. We also conclude parents did not establish the Department failed to fulfill a duty to inquire further into mother's American Indian heritage. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On September 2, 2015, the Department filed a dependency petition on behalf of five-month old S.S. The petition alleged the child's positive toxicology at birth and the parents' drug use and history of domestic violence rendered the parents unable adequately to care for the child. The juvenile court found the

Department established a prima facie case that the child fell under Welfare and Institutions Code[1] section 300, subdivisions (a), (b) & (j), temporarily placed the child in the Department's custody, and ordered services.

At the jurisdictional hearings in September and December 2015, the juvenile court sustained the allegations under section 300, subdivisions (b) (positive toxicology) and (j) (abuse of sibling) as to mother, and subdivision (b) (positive toxicology, failure to protect, drug use, and domestic violence) as to father. The juvenile court declared the child a dependent under section 300, subdivisions (b) and (j), and ordered the child removed from parental custody, family reunification services, and monitored visits for parents.

On June 30, 2016, the juvenile court held a six-month review hearing. Mother withdrew her contest on that date. The juvenile court found parents had not demonstrated the capacity and ability to complete their respective treatment plans or provide for the child and terminated family reunification services. The court then set a hearing under section 366.26 to terminate parental rights. Although parents were advised of their right to file a writ petition, neither parent did so. The court held a review of permanent plan hearing on December 15, 2016, and found the child's permanent plan was adoption.

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

The court below also found ICWA did not apply as to mother at the December 15, 2016 hearing, and as to father at a continued January 26, 2017 hearing.[2]

The juvenile court held the section 366.26 hearing on March 30, 2017. At the beginning of the hearing, the court denied mother's previously filed section 388 petition asking the court not to order adoption of the child. The court also denied father's previously filed section 388 petition asking the court not to terminate reunification services and to grant a continuance or more time to complete the program. After receiving into evidence the Department's reports and a letter written by father, the court concluded the child was adoptable and no exception to adoption applied. The court terminated the parental rights of both parents and declared the child free for adoption by his maternal cousins.

Father and mother filed timely notices of appeal from the March 30, 2017 order terminating parental rights.[3]

DISCUSSION

1. *Governing Law and Standard of Review*.

"Congress enacted ICWA in 1978 in response to 'rising concern in the mid–1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.' [Citation.]" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7 (*Isaiah W.*).)

---

[2] The facts concerning the juvenile court's finding that ICWA did not apply are discussed below in detail.

[3] Mother joins in father's arguments made in his opening brief. Neither mother nor father filed a reply brief.

"ICWA addresses these concerns by establishing 'minimum Federal standards for the removal of Indian children from their families and the 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.' (25 U.S.C. § 1902.)" (*In re Abbigail A.* (2016) 1 Cal.5th 83, 90.)

These minimum standards "include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a[n Indian] child in foster care or to terminate parental rights." (*Isaiah W., supra,* 1 Cal.5th at p. 8.) Of course, ICWA applies only if the child who is the subject of the custody proceedings is an "Indian child." In this context, " 'Indian child' means 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 Indian status of the child need not be certain to invoke [ICWA's] notice requirement. (*In re Kahlen W.* [(1991)] 233 Cal.App.3d [1414,] 1422.)" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471.) Rather, "*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 Indian child's tribe . . . of the pending proceedings and of their right of intervention. If the identity or location of . . . the tribe cannot be determined, such notice shall be given to the Secretary [of the Interior]." (25 U.S.C. § 1912(a), italics added.) An Indian child, parent, Indian custodian, or the Indian child's tribe may petition to

invalidate the proceeding if notice is not properly provided. (25 U.S.C. § 1914.)

California law incorporates the federal ICWA notice provisions. (See §§ 224–224.3.) Thus, the same notice must be sent "whenever it is known or there is reason to know that an Indian child is involved . . . unless it is determined that [ICWA] does not apply to the case in accordance with Section 224.3." (§ 224.2, subd. (b).)

At the time this case was pending in dependency court, the regulations implementing ICWA did not define "reason to know."[4] Section 224.3, subdivision (b), however, provides the circumstances under which there may be "[a] reason to know the child is an Indian child." They include, but are not limited to, where "[a] person having an interest in the child . . . or a member

---

[4] Federal regulations adopted as of December 12, 2016, now specify a court has "reason to know" the child is an Indian child, including if, *inter alia*, "[a]ny participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child." (25 C.F.R. § 23.107(c)(2) (2018); *In re Breanna S.* (2017) 8 Cal.App.5th 636, 650, fn. 7 (*Breanna S.*).) "The new regulations apply to any child custody proceeding initiated on or after December 12, 2016, even if the child has been involved in dependency proceedings prior to that date. A 'child-custody proceeding' includes, as a separate proceeding, a termination of parental rights, a preadoptive placement or an adoptive placement. (25 U.S.C. § 1903(1); 25 C.F.R. § 23.2 (2017).) If any one of those types of proceedings is initiated on or after December 12, 2016, the new regulations apply to that proceeding." (*Breanna S.,* at p. 650, fn.7; *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784–785.)

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 biological parents, grandparents, or great-grandparents are or were a member of a tribe." (§ 224.3, subd. (b)(1); see also Cal. Rules of Court, rule 5.481(a)(5)(A).)

Under both federal regulations and California law, the notice under ICWA must include "all known information concerning the child's parents, grandparents and great-grandparents." (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576 (*Cheyanne F.*) [citing then-current 25 C.F.R. §§ 23.11(d)(3), 224.2(a) (2008)].) If known, the notice also must provide alternative names, current and past addresses, birthdates, places of birth and death, tribal enrollment information, and other identifying information. (*Cheyanne F.*, at p. 575, fn. 3.)

To further its purpose to enable a tribe to "investigate and determine" whether a child is an Indian child, a notice under ICWA must "contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. [Citations.]" (*Cheyanne F., supra,* 164 Cal.App.4th at p. 576.)

We review the juvenile court's ICWA findings under the substantial evidence test, which requires us to determine if reasonable, credible evidence of solid value supports the court's order. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467 (*Hunter W.*); *In re H.B.* (2008) 161 Cal.App.4th 115, 119–120.) Father and mother challenge only the juvenile court's finding that ICWA did not apply to this dependency proceeding. Consistent with our standard of review, we state the relevant facts and evidence in the light most favorable to the court's ruling. (*In re H.B.*, at pp. 119–120.)

2. *Substantial Evidence Supports the Juvenile Court's Finding ICWA Did Not Apply as to Father.*

Father contends ICWA's notice requirements were not satisfied here because the Department incorrectly identified Jose H. as the paternal great-grandfather on the ICWA-030 notice. In fact, Rafael F. is the paternal great-grandfather, and Jose H. is the paternal *great*-great-grandfather. For the reasons that follow, we conclude that any error in the ICWA notice was harmless.

a. *Facts relevant to the Department's ICWA notice.*

i. *The paternal grandmother's information about father's American Indian ancestry.*

After father submitted a Parental Notification of Indian Status form (ICWA-020) stating he may have Indian ancestry, but was unsure of the tribe, a Department investigator interviewed the paternal grandmother, Barbara S. On September 16, 2015, Barbara S. told the investigator she did not have proof of American Indian ancestry. As a child, she "only heard her father, [Rafael F.] who passed away [in November 2013] in Bisbee, Arizona had Apache ancestry and could never be verified." Her father had not lived on a reservation, and she did not believe he was a registered member of any Indian tribe. She had no other information concerning her family's American Indian ancestry. Subsequently, on November 3, 2015, Barbara S. told the investigator she did not believe there was "any Indian American ancestry in their family."

ii. *The ICWA-030 notice and responses.*

On December 9, 2016, the Department sent an ICWA notice by certified mail to Apache and Navajo tribes. The ICWA notice noted neither the child, his father, nor his paternal grandmother

were registered members of any tribe, and that to the paternal grandmother's knowledge, no other paternal relative was a registered member of any tribe. Further, the notice listed the names, and, if known (and applicable), birth dates and places, and death dates and places, for the parents, grandparents, and great-grandparents.

As we have said, the notice misidentified Jose H. as the paternal great-grandfather. However, it also stated the following: "[The dependency investigator] interviewed the paternal grandmother Barbara S[.], [phone number], who reported possible Apache, Navajo ancestry on her paternal side (the father's maternal side). She reported that the paternal great grandfather Rafael F[.] may have American Indian ancestry as 'everyone always says he looks like the Indian on the Indian coin. I think he was Apache but don't quote me. Somebody said that he may be Apache or Navajo.' The paternal grandmother Barbara S[.] was able to provide several family members' names and dates of birth."

The notice identified another paternal great-grandfather as Frank P., and states "[Barbara S.] believes that Frank P[.] may have Navajo ancestry." The paternal grandmother was unable to provide information regarding the dates and places of birth and death for Frank P.

An additional paternal relative, Maria F., is listed on page seven of the notice under "other relative information." The notice identifies Maria F. as the paternal great-great-great-grandmother and states that "[t]he paternal grandmother believes that Maria F[.] may have Apache or Navajo ancestry." It also notes Maria F. is deceased, but "was residing in Bisbee,

Arizona." The paternal grandmother did not have information on Maria F.'s place or date of birth.[5]

The Department sent this ICWA notice to the Bureau of Indian Affairs, the Department of the Interior, and 12 federally registered Navajo and Apache tribes. Six of those noticed responded. None found the child enrolled or eligible for enrollment in their tribes.

On January 26, 2017, after considering the Department's reports, the ICWA notice, and the tribes' responses, the juvenile court found its previous "No ICWA Finding" remained.

iii. *Additional information on appeal regarding father's Indian ancestry.*

On appeal, father filed a motion for leave to produce additional evidence concerning his family's Indian ancestry. This court granted the motion and filed paternal grandmother Barbara's S.'s declaration and attached family tree. In her declaration, Barbara S. confirms that Rafael F. is the paternal great-grandfather, and Jose H. is the paternal great-great-grandfather. Barbara further states that Maria F. (Rafael's grandmother and S.S.'s great-great-great grandmother) was "of Native American ancestry [but] I do not know the tribe." Finally, Barbara declared that Frank P., Barbara's maternal great-grandfather (S.S.'s great-great-great-grandfather), "was either a Navajo or Apache Indian." Barbara S. attached a tree-style chart

---

[5] For the maternal relatives, the notice identified their names and known information, but under each noted mother did not claim American Indian ancestry and was not a registered member of any tribe. Under mother, the notice also included the juvenile court's finding that ICWA does not apply as to mother.

to her declaration showing her ancestry "based upon family history and relative reports."

b. The *ICWA-030 notice satisfied ICWA's notice requirements and any defect in the form was not prejudicial.*

"[W]here notice has been received by the tribe, as it undisputedly was in this case, errors or omissions in the notice are reviewed under the harmless error standard. (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 784 [citation]; *In re Junious M.* (1983) 144 Cal.App.3d 786, 794 [citation].)" (*Cheyanne F., supra,* 164 Cal.App.4th at p. 576.) As father concedes, although "[d]eficiencies in an ICWA notice are generally prejudicial," they "may be deemed harmless under some circumstances." (*Id.* at p. 577.) We find such circumstances exist here.

Father acknowledges that Rafael F. is listed on the ICWA notice, but contends that the Department's error in identifying Jose H., rather than Rafael F., as the paternal great-grandfather prevented the notified tribes from meaningfully searching their tribal registries. We do not agree. Although the ICWA notice arguably misidentified Rafael F.'s relationship to S.S., it accurately provided Rafael F.'s full name and correctly identified him as a paternal ancestor. Father does not identify any known information omitted from the notice, and we are not aware of any. The notice also provided all known information about Rafael F.'s grandmother, Maria F., whom paternal grandmother Barbara S. believed to be the source of the family's Indian ancestry. In short, the notice provided the tribes with names and identifying information for Rafael, as well as for his ancestor believed potentially to have been a member of a Navajo or Apache tribe.

Moreover, Barbara S. now avers in her appellate declaration that she *does not know* in which tribe Rafael may have been eligible for membership—and that it is a *different* paternal relative, Frank P., who may have been a member of a Navajo or Apache tribe. The ICWA notice identified Frank P. as a paternal ancestor, and neither parent contends that the ICWA notice omitted any known identifying information as to Frank P.[6] Accordingly, because in light of the new evidence on appeal, there is no reason to believe Rafael F. has Apache or Navajo ancestry, any error in misidentifying Rafael F.'s relationship to S.S. is harmless.

The present case thus is distinguishable from *In re S.M.* (2004) 118 Cal.App.4th 1108, on which father relies. In that case, the ICWA notice did not include *any information* about either the child's paternal grandmother or the paternal great-grandmother, the relative with the alleged American Indian heritage. (*Id.* at p. 1116.) Additionally, the child welfare agency failed to provide the juvenile court with the tribe's response requesting additional information. (*Id.* at p. 1118.) The court of appeal therefore concluded that the child welfare agency had failed to comply with ICWA's notice provisions. (*Id.* at p. 1113.) Here, in contrast,

---

[6] The ICWA-030 notice identifies Frank P. as a paternal great-grandfather and says he may have Navajo ancestry. Barbara S. now declares Frank P. was *her* great-grandfather (i.e., S.S.'s great-great-great-grandfather). Regardless, parents do not raise any error with respect to Frank P.'s information. And, because Barbara S. could not provide any information regarding Frank P.'s addresses, birth date and place, and date and place of death, listing Frank P. as a great-great-great grandfather would not have affected a tribe's ability to search his correctly spelled name in the tribal registries.

DCFS *did* provide identifying information about each of the relatives (Rafael F., Frank P., and Maria F.) alleged to have Indian ancestry, and thus there could have been no impediment to the tribes' ability to determine whether S.S. is an Indian child.

In re Louis S. (2004) 117 Cal.App.4th 622, another case cited by father, also is distinguishable. There, the child's mother claimed Apache heritage through her maternal grandmother (child's maternal great-grandmother). (*Id.* at p. 627.) The social worker assigned to the case sent ICWA notices, but they contained multiple errors, including misspelling the mother's, maternal grandmother's, and great-grandmother's names; omitting birthdates for the maternal grandmother and great-grandmother; and placing the maternal great-grandmother's information in the space for the paternal grandfather's. (*Id.* at pp. 627–628.) On that record, the court concluded that "[b]ecause the notices contained misspelled and incomplete names, provided information about [the maternal great-grandmother] in the wrong part of the form, and did not provide birthdates for [the maternal grandmother or great-grandmother], the tribe could not conduct a meaningful search to determine [the child's] tribal heritage." (*Id.* at p. 631.)

In the present case, in contrast, although the Department put Rafael F.'s name in the wrong space in the ICWA notice, the notice included the full, correctly spelled name of Rafael F. and stated he was the paternal great-grandfather. Moreover, as we have said, known information regarding Maria F., from whom Rafael F. apparently obtained his American Indian ancestry, also is listed on the ICWA form, and all known information about Frank P., whom Barbara S. now declares was of Navajo or Apache descent, was included. As a result, no tribe was

prevented from conducting a meaningful search of the child's potential American Indian ancestry.

In short, Father has not demonstrated any mislabeling error here prevented any tribe from conducting a meaningful search of its membership rolls. Accordingly, we find no prejudice associated with any error in listing Rafael F.'s information under the tribe or band space rather than the paternal great-grandfather space of the ICWA-030 form. Substantial evidence exists in the record to support the juvenile court's "No ICWA" finding as to father, and the mislabeling error on the ICWA-030 form was harmless.

3. *The Department and Juvenile Court Satisfied Their Duty to Inquire About the Child's Potential ICWA standing as to Mother.*

Father also contends the Department failed to comply with its duty of continuing inquiry under section 224.3, subdivision (a), by not following up with mother about her American Indian heritage.

a. *The Department's and juvenile court's inquiry into mother's ICWA status.*

Shortly after the child's birth in April 2015, parents reported the child had no American Indian heritage. Before the September 2, 2015 detention hearing, mother submitted an ICWA-020 form stating she had no American Indian ancestry as far as she knew. At that hearing, the juvenile court questioned mother about her statement of no known American Indian ancestry and found ICWA did not apply to her.

At the December 15, 2016 review of permanent plan hearing, the juvenile court asked if anyone wished to be heard on the ICWA issue. Mother's counsel told the court mother

"indicated to me now that she may have American Indian heritage" and "would like to ask her grandparents regarding any American Indian heritage that she may have in her family."

The juvenile court told mother she was "welcome to do that," and she should provide any new information to her counsel and the social worker. The court found ICWA did not apply. Nevertheless, the juvenile court ordered the Department to contact mother "to follow up and investigate" mother's new claim of possible American Indian heritage and provide ICWA notice if appropriate, but left the "No ICWA" finding in place.

At the next hearing on January 26, 2017, the juvenile court found the previous "No ICWA finding" remained. The court asked, "Anyone wish to be heard?" No one responded.

Before the final section 366.26 hearing, mother filed a section 388 petition on March 3, 2017, asking the court not to recommend adoption on the ground her son had an emotional bond to her and she was in treatment. Under the section for information about parents on the form, she wrote, "Navajo or Apache" in the space for Indian tribe. On March 30, 2017, mother's counsel filed another section 388 petition on mother's behalf asking the court to reinstate family reunification services. She left the space for Indian tribe blank.

The juvenile court did not revisit the ICWA issue at the March 30, 2017 hearing terminating parents' parental rights. Neither mother's counsel, father's counsel, nor mother, who was present, asked to be heard on that issue.

b. *California's "continuing duty" of inquiry.*

"ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry." (*In re H.B., supra,* 161 Cal.App.4th at p. 120.) California law, however, imposes an

additional "affirmative and continuing" duty on the juvenile court and the child protective agency "to inquire whether a child . . . is or may be an Indian child . . . ." (§ 224.3, subd. (a); *In re Michael V.* (2016) 3 Cal.App.5th 225, 233 (*Michael V.*).) "This affirmative duty to inquire is triggered whenever the child protective agency or its social worker 'knows or has reason to know that an Indian child is or may be involved.' (Cal. Rules of Court, rule 5.481(a)(4).)" (*Michael V.,* at p. 233.)

Thus, courts have found the duty to inquire under California Rule of Court, rule 5.481 "is triggered by a lesser standard of certainty regarding the minor's Indian child status . . . than is the duty to send formal notice to the Indian tribes." (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1200; accord, *Michael V., supra*, 3 Cal.App.5th at p. 235.) Once provided with information a child may be an "Indian child," the social worker "must make further inquiry as soon as practicable by," among other things, "[i]nterviewing the parents, Indian custodian, and 'extended family members' . . . [¶] . . . [and] [c]ontacting . . . any other person that reasonably can be expected to have information regarding the child's membership status or eligibility." (Cal. Rules of Court, rule 5.481(a)(4)(A), (C); *Michael V.*, at p. 233.) However, "the obligation is only one of inquiry and not an absolute duty to ascertain or refute Native American ancestry." (*In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1413.)

c. *Substantial evidence supports the juvenile court's finding ICWA did not apply as to mother.*

The record reflects mother did not affirmatively claim American Indian ancestry. Mother first disclaimed any American

Indian heritage at the hospital shortly after the child's birth and again in her ICWA-020 form submitted in connection with the jurisdiction hearing. The juvenile court questioned mother to confirm her lack of American Indian status at that September 2, 2015 hearing, "I have a form here entitled 'Parental Notification of Indian Status' in which you indicate there's no Indian ancestry as far as you know; is that correct, Ms. G[.]?" After mother responded, "yes," the court found ICWA did not apply to mother.

Mother did not raise the ICWA issue again until over a year later at the December 15, 2016 review of permanent plan hearing held after the juvenile court had set a section 366.26 hearing to terminate parental rights. For the first time in the proceeding, mother indicated "she *may* have American Indian heritage," and "would like to ask her grandparents regarding any American Indian heritage that she may have in her family." (Italics added.) Mother did not identify a specific relative through whom she now believed she *may* have American Indian heritage, much less a potential tribe. Nor did mother provide any reason why she now believed she may have such ancestry.

Mother's statements concerning her American Indian heritage can only be described as "too vague and speculative to give the juvenile court any reason to believe the minor[] might be [an] Indian child[]" through mother's ancestry. (*In re O.K.* (2003) 106 Cal.App.4th 152, 157 [finding grandmother's statement "[child] 'may have Indian in him', " without more, insufficient to trigger ICWA]; see also *Hunter W., supra,* 200 Cal.App.4th at pp. 467−1468 [upholding lower court's finding mother's claim of possible Indian ancestry through father and deceased grandmother "too speculative" where she could not identify the tribe, knew no relative who was a member of a tribe, and did not

provide father's contact information]; *In re J.D.* (2010) 189 Cal.App.4th 118, 125 [finding grandmother's statement, " 'I can't say what tribe it is and I don't have any living relatives to provide any additional information[;] I was a little kid when my grandmother told me about our Native American ancestry but I just don't know which tribe it was' . . . too vague, attenuated and speculative to give the dependency court any reason to believe the children might be Indian children"].)

Thus, parents have failed to demonstrate the speculative information "*mother* provided [to the juvenile court] was sufficient to trigger" a duty of further inquiry by the Department. (*Hunter W., supra,* 200 Cal.App.4th at p. 1468.) Based on the evidence before it, including mother's vague statement, the juvenile court properly found it had no reason to know the child was an Indian child under ICWA and substantial evidence supports its finding.

d. *Parents have failed to provide evidence the Department failed in its duty of inquiry.*

Although the juvenile court found it had no reason to know the child was an Indian child, it nevertheless ordered the Department "to follow up and investigate any possible ICWA for the mother," based on her statement she "may" have ancestry. The record is silent thereafter as to whether the Department "follow[ed] up" with mother. Based on the absence of any report by the Department that it made additional inquiries of mother or her relatives, father contends the Department has not demonstrated it complied with its duty under California law to make further inquiry. Father ignores what the record *does* reflect.

First, the record reflects the juvenile court did not order the Department to report the *absence* of new information. It simply ordered the Department to "provide proper ICWA notice if necessary." Second, the record reflects the juvenile court asked parents' counsel a month later on January 26, 2017, if they wished to be heard on the "No ICWA" finding. No one did.[7]

Moreover, the court did not order any further written reports from the Department; it only requested the Department to submit a last minute information to inform the court of the status of the home study before the continued 366.26 hearing. Not surprisingly, the last minute information the Department later submitted in March 2017 addressed the home study's completion as requested.

The only other reference in the record to mother's possible American Indian ancestry is on the form she submitted March 3, 2017, in connection with her section 388 petition asking the court not to proceed with terminating her parental rights on the grounds she was in counseling and her son was bonded to her. Mother noted, "Navajo or Apache" in the space for "Indian tribe" under a section entitled "Information about parents, legal

---

[7] We recognize at that juncture the juvenile court had just determined the "No ICWA" finding should remain after examining the ICWA notices and negative responses from tribes concerning father's American Indian ancestry. Regardless, if mother had new information concerning her possible American Indian heritage, she could have (and should have) mentioned it to the court at that time. Indeed, at the prior hearing in December the juvenile court had instructed mother "to follow-up" and "provide whatever information to [counsel] and to the social worker." There is no evidence in the record that she did so.

guardians, and others." [8] Mother did not ask the court to change its "No ICWA" finding in her petition, however. Nor has mother made any representations on appeal to this court that she may have American Indian heritage. (See, e.g., *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431 (*Rebecca R.*) [commenting on father's failure to "ma[ke] an offer of proof or other affirmative representation that, had he been asked, he would have been able to proffer some Indian connection sufficient to invoke the ICWA"].)

Father contends the similarities here to *Michael V.* require reversal. We disagree. In *Michael V.*, a mother also appealed the termination of her parental rights on the ground the court and Department failed to comply with the inquiry and notice provisions of ICWA. (*Michael V., supra,* 3 Cal.App.5th at p. 228.) The court of appeal agreed and found the Department failed to "take appropriate affirmative steps" to investigate mother's claims of possible American Indian ancestry. (*Id.* at p. 235.)

There, the mother had stated she might have Indian ancestry through her maternal grandmother on her initial ICWA-020 form. (*Michael V., supra,* 3 Cal.App.5th at p. 230.) The juvenile court asked for more details at the detention hearing, but the mother only knew, from her social worker as a child, that her grandmother was possibly from two tribes. (*Ibid.*) Based on

---

[8] It is unclear whether mother's note of "Navajo or Apache" relates to father, who claimed Navajo or Apache ancestry, or to herself. The space asking for "Indian Tribe" falls within the section requesting information about *both* parents. Mother included both her name and father's name in that section. As discussed *ante*, Father had previously claimed possible Navajo or Apache ancestry.

the mother's representation, the court found no reason to know an Indian child was involved, but ordered the Department to investigate the mother's claims, give ICWA notice if appropriate, and "*to include details regarding its ICWA inquiry* in the social study report." (*Ibid.*, italics added.) The Department reported it interviewed the mother, who could not provide any specific tribe information. (*Id.* at pp. 230–231.) At a status hearing, the juvenile court found ICWA did not apply after no one asked to be heard on the issue. (*Id.* at p. 231.)

The court of appeal acknowledged the Department had re-interviewed the mother as ordered, but found that alone was insufficient to fulfill the Department's duty under the circumstances. (*Michael V., supra,* 3 Cal.App.5th at pp. 235–236.) The court noted the Department "made no effort to locate the children's maternal grandmother to interview her even though it was she who reportedly had the direct link to a tribe"; did not attempt to interview the mother's siblings; and did not ask the paternal relatives if they had "information regarding [the children's] possible Indian ancestry through their mother." (*Ibid.*)

In contrast, given mother's repeated disclaimer of American Indian heritage, there was nothing for the Department initially to investigate here, as there was in *Michael V.* Mother's lack of information here is in stark contrast to the details provided by the mother in *Michael V.* The mother there specifically identified the maternal grandmother as possibly having American Indian heritage from two tribes while mother here did not identify any relative who potentially was a member of a tribe other than to tell counsel, more than a year after disclaiming any American Indian ancestry, she wanted to "ask

her grandparents regarding any American Indian heritage that she may have in her family."

Father contends mother's statement revealed that her maternal grandparents might have information concerning her Indian heritage triggering a duty to inquire under *Michael V.* We disagree. In *Michael V.* the mother specified that her grandmother may have belonged to two different tribes. Here, mother's statement that she wanted to ask her grandparents about potential American Indian ancestry did not reveal any information concerning what they might know about her American Indian heritage—only that she wanted to ask them. Nor did mother indicate why she suddenly believed she might have American Indian ancestry whereas the mother in *Michael V.* had a basis for her belief—her social worker's investigation into her potential American Indian heritage.

More importantly, although the juvenile court ordered the Department to investigate mother's claims of possible American Indian ancestry, nothing in the record suggests the Department here ignored information provided by mother as the Department did in *Michael V.* The record in *Michael V.* revealed the Department failed to interview known relatives with potential information about the child's American Indian status. Here, however, other than the absence in the record of further discussion concerning mother's claimed American Indian ancestry, father has not identified any reason to conclude the Department failed to make further inquiry. Accordingly, we presume the Department complied with the juvenile court's order. (Evid. Code., § 664.)

Our presumption is bolstered by the facts discussed above that mother did not contest the "No ICWA" finding when invited

to be heard by the juvenile court or provide new information to the court concerning her Indian status. Absent evidence in the record to the contrary, it is appropriate to presume the Department simply did not report back that no further inquiry was necessary. (See *Rebecca R., supra,* 143 Cal.App.4th at p. 1430 [rejecting argument that absence of a record demonstrated failure to satisfy duty of inquiry where there was "no reason to think that [the department of child services] failed to carry out the court's order [to ask father whether he had Indian ancestry], and father . . . provided none . . . . (Evid. Code, § 664 [presumption of duty regularly performed].)"].) Even now, mother has not affirmatively told this court that she has American Indian ancestry.

Therefore, we find parents have failed to establish any error associated with the juvenile court's finding ICWA did not apply as to mother.

We find father's reliance on *Breanna S.* misplaced. There, the mother initially indicated potential American Indian heritage, identifying the Apache and Yaqui tribes on her ICWA-020 form. (*Breanna S., supra*, 8 Cal.App.5th at pp. 643-644.) The juvenile court ordered the Department to investigate and give proper notice to the tribes if appropriate. (*Id.* at p. 644.) As part of its investigation, the Department interviewed the maternal grandmother, who told the investigator there was possible Yaqui ancestry through the deceased maternal great-grandmother, whose information she gave to the investigator. (*Ibid.*) The Department sent ICWA notices to the Yaqui tribe, BIA, and Secretary of the Interior. (*Ibid.*) The tribe responded the children were not eligible for membership. (*Ibid.*) The notice failed to include the maternal grandmother's former address and

place of birth, the maternal great-grandmother's place of birth and place of death, and the maternal great-grandfather's place of death—all information the Department *conceded* it knew, but omitted. (*Id.* at p. 651.) On appeal, the Department argued these errors were harmless. (*Ibid.*) (The Department also had omitted the maternal grandfather's current and former addresses and the maternal great-grandfather's place of birth from the notice, but asserted it did not know that information. [*Ibid.*])

The court of appeal reversed, holding the Department had a duty to inquire about the missing information. (*Breanna S., supra,* 8 Cal.App.5th at p. 652.) The court noted the Department had interviewed the mother and grandmother, but never asked them about the maternal grandfather (the grandmother's husband) and did not attempt to locate him for an interview. (*Ibid.*) The Department also did not attempt to learn the birth place of the maternal great-grandfather. (*Ibid.*) The court could not find that the information the Department omitted from the ICWA Notice would not have "altered the tribe's evaluation," as some of that information pertained directly to the relative whom the mother and grandmother had identified as having American Indian heritage. (*Id.* at p. 654.)

The key difference here is mother gave no information pertaining to her potential American Indian ancestry to form a basis for pointed inquiry, as in *Breanna S.* The only information mother provided was that she "may" have tribal ancestry. Nothing in her comments indicated her maternal grandparents would have any information concerning her possible American Indian heritage. In direct contrast, in *Breanna S.*, the Department knew specific family members potentially had identifying information about relatives with American Indian

ancestry, but did not elicit that information even after interviewing the family members. Here, mother initially had told the Department and the juvenile court that she did not have American Indian ancestry and then only stated she wanted to "ask" her grandparents whether the family had any American Indian ancestry. She did not indicate what her grandparents might know or why she now believed she may have American Indian ancestry. She did not even describe having heard of a relative with American Indian ancestry. Further, the Department in *Breanna S.* conceded it erred in omitting information in the ICWA notice. Unlike the record in *Breanna S.*, nothing in the record here suggests there was any information about the child's potential American Indian heritage that the Department failed to investigate or failed to include in the ICWA notice.

We find the Fourth District's observation in *Rebecca R.* an apt one: "Parents unable to reunify with their children have already caused the children serious harm; the rules do not permit them to cause additional unwarranted delay and hardship, without any showing whatsoever that the interests protected by the ICWA are implicated in any way." (*Rebecca R., supra,* 143 Cal.App.4th at p. 1431.)

In short, parents have not demonstrated the juvenile court erred in finding ICWA did not apply. Substantial evidence supports the trial court's finding, and no evidence supports a conclusion the Department or court failed to meet its duty of inquiry.

DISPOSITION

The order of the juvenile court terminating mother's and father's parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

CURREY, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.