Filed 6/21/17 In re K.P. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re K.P. et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.P., Defendant and Appellant.	B276768 (Los Angeles County Super. Ct. No. DK15106)

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Conditionally affirmed and remanded with directions.

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

Mary C. Wickham, County Counsel and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Appellant L.P. (Mother) appeals the juvenile court's order asserting jurisdiction over her two children, "Kal" and "Kas," as well as the dispositional order that followed, contending the court failed to comply with the requirements of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq., ICWA). Respondent does not contest the appeal. We have reviewed the file and found that Mother notified the Department of Children and Family Services (DCFS) and the court of possible Indian heritage through her maternal grandmother and specified a tribe. There is no evidence that notices were sent. Nor is there evidence that DCFS attempted to contact the grandmother or Mother's mother to obtain additional information about the alleged Indian heritage. Accordingly, we conditionally affirm, and remand for ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

At the January 11, 2016 detention hearing, Mother filled out a "[p]arental [n]otification of Indian [s]tatus" form indicating she might have Indian ancestry.[1] The form did

[1] The children were detained from Mother and placed with non-related extended family members, who had been caring for Kal while Mother was in the hospital giving birth to Kas.

not specify a tribe or name a particular ancestor who might be a member, and the court stated at the hearing that Mother should "inform [the] court of [the] tribe when she can identify a tribe." According to the detention report, however, Mother told the caseworker that her maternal grandmother (the children's great-grandmother) was a member of the Kickapoo tribe and provided the caseworker the great-grandmother's married and maiden names.[2]

On January 22, 2016, the caseworker re-interviewed Mother and stated in the February 2016 jurisdiction/disposition report that "[M]other did not complete the interview, thus no further information was obtained [about her alleged Indian heritage]." The report indicated, however, that the caseworker had interviewed Mother at length that day about her living arrangements, her hospitalizations and her mental condition. Moreover, there is no evidence in the record that the caseworker attempted to contact the maternal grandmother or great-grandmother to obtain further information about the children's possible connection to the Kickapoo tribe.[3]

At a hearing on April 14, 2016, the court inquired whether DCFS had obtained additional ICWA information

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[2] The petition itself stated that the children "may be a member of or eligible for membership in" the Kickapoo tribe.

[3] In March 2016, DCFS received the file for a dependency case pending in Missouri involving Mother's older child, E.P. The file contained contact information for the children's grandmother and great-grandmother.

from Mother. Counsel for DCFS stated that the caseworker had attempted to follow up by re-interviewing Mother, and erroneously stated that Mother had indicated possible Indian ancestry but had not provided the name of a tribe. The court found it had no reason to know that ICWA applied. Mother's counsel objected, contending that the court could not make that determination until appropriate notices had been sent. There is no further discussion of ICWA in the record. On May 4, 2016, the court issued its jurisdictional and dispositional orders.[4] This appeal followed.

DISCUSSION

The sole issue raised by Mother is whether the court and DCFS complied with ICWA. ICWA requires "notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights 'where the court knows or has reason to know that an Indian child is involved.'" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8, quoting 25 U.S.C. § 1912(a).) The notice "ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child." (*Isaiah W., supra,* at

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[4] The jurisdictional facts are not pertinent to this appeal. We will briefly note, however, that the court found jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b) (failure to protect) based on Mother's history of mental and emotional problems and refusal to take psychotropic medication as prescribed. (Undesignated statutory references are to the Welfare and Institutions Code.)

p. 8.) No proceeding to place a child in foster care or terminate parental rights can be held "until at least ten days after receipt of [ICWA] notice by the parent or Indian custodian and the tribe . . . ." (25 U.S.C. § 1912(a).) "After proper notice has been given, if the tribes respond that the minor is not a member or not eligible for membership, or if neither the [Bureau of Indian Affairs] nor any tribe provides a determinative response within 60 days, then the court may find that ICWA does not apply to the proceedings." (*Isaiah W.*, *supra*, at p. 15.)

ICWA's notice requirements are triggered when a parent expresses the belief that he or she has Indian heritage and names the tribe or identifies a parent or grandparent who may have been Indian. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 257-258; *In re Miguel E.* (2004) 120 Cal.App.4th 521, 549-550; see *In re D.C.* (2015) 243 Cal.App.4th 41, 63 [explaining "'it is preferable to err on the side of giving notice'"].) Moreover, a statutorily-imposed duty to inquire is triggered whenever the court or child protective agency "'knows or has reason to know that an Indian child is or may be involved.'" (*In re Michael V.* (2016) 3 Cal.App.5th 225, 233, quoting Rules of Court, rule 5.481(a)(4) (*Michael V.*); see also §224.3, subd. (c).) If necessary to clarify information received from the parent, the caseworker must "make further inquiry regarding the possible Indian status of the child . . . as soon as practicable" after the issue of Indian heritage arises, by interviewing "any . . . person [who] reasonably can be

expected to have information regarding the child's membership status or eligibility." (§224.3, subd. (c).) Where the record indicates the caseworker failed to make adequate inquiry after receipt of information indicating the children involved in the proceeding might be Indian children, remand for ICWA compliance is required. (See, e.g., *Michael V.*, *supra*, at pp. 235-236 [remand for Department to conduct "meaningful investigation" into claim of Indian ancestry where it made no effort to locate and interview children's maternal grandmother although she had reported link to tribe]; *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1167-1168 [matter remanded where caseworker failed to interview paternal grandmother after receiving conflicting information about possible Indian heritage from child's biological father].)

Here, there is no dispute the court erred in making its finding that ICWA did not apply without either sending notice to the named tribe, or ensuring the caseworker had contacted the maternal relatives with presumably superior knowledge (the grandmother and great-grandmother) to confirm the identity of the tribe or clarify that Mother was mistaken about the existence of Indian heritage.[5] A majority of courts, including this one, have held that a failure to comply with ICWA does not represent jurisdictional error,

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[5] It may be that Mother disclaimed any Indian heritage or that the caseworker spoke with the children's grandmother and great-grandmother and confirmed that no Indian heritage existed, but as Mother points out in her brief, there is no indication in the record that either occurred.

and that orders entered during the period of noncompliance are not void. (*Tina L. v. Superior Court* (2008) 163 Cal.App.4th 262, 268-269, and cases cited therein.) Unless the order appealed is one terminating parental rights, the order may be affirmed with directions to the juvenile court to ensure compliance with ICWA notice requirements; thereafter, if the minor is determined to be an Indian child, interested parties are permitted to petition the court to invalidate orders that violated ICWA. (*Ibid.*; *In re Brooke C.* (2005) 127 Cal.App.4th 377, 385; accord, *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467 ["When it is shown that the court or department knew or had reason to know the child was an Indian child but failed to make an inquiry, we remand with instructions to ensure compliance with ICWA; however, in doing so, we do not reverse the jurisdictional or dispositional orders where there is not yet a sufficient showing that the child is, in fact, an Indian child within the meaning of ICWA"].) Accordingly, we will conditionally affirm the court's jurisdictional and dispositional orders and remand the matter for compliance with ICWA.

DISPOSITION

The court's jurisdictional and dispositional orders are conditionally affirmed. The matter is remanded with directions to the juvenile court to order DCFS to comply with ICWA notice and inquiry requirements as set forth above.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.