Filed 7/29/16 In re J.H. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.H. et al, Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JOSE H., Defendant and Appellant.	B268913 (Los Angeles County Super. Ct. No. DK13568)

APPEAL from orders of the Superior Court of Los Angeles County. Terry T. Truong, Commissioner. Affirmed.

Michelle Anne Cella, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Jose H. (Father) appeals from the jurisdictional and dispositional orders of the juvenile court, arguing that the court erred by finding that the Indian Child Welfare Act (ICWA) was inapplicable to his case. We disagree with his contention and thus affirm the juvenile court's orders.

FACTS AND PROCEEDINGS BELOW

On September 26, 2015, the Department of Children and Family Services (DCFS) removed two boys (then ages 7 and 5) from Father's custody based on allegations of domestic violence between the boys' mother (not a party to this appeal) and Father. On September 30, 2015, DCFS filed a petition, pursuant to Welfare and Institutions Code section 300[1], claiming that their mother and Father had a history of engaging in violent altercations in the presence of their two children. In an incident directly preceding the filing of the petition, Father allegedly struck and kicked the boys' mother in the leg and threw a cereal bowl at her.

On September 30, 2015, Father filed a parental notification of Indian status with the court, indicating that Father may have Cherokee ancestry and identified his mother as having information relating to his claims of ancestry. He did not provide her telephone number. On the same date, Father was questioned by the court regarding his possible Cherokee ancestry, and he stated that his mother might have information about his Indian heritage but he did not have a phone number for her. The court ordered DCFS to conduct an investigation in regards to Father's "possible Cherokee background."

A report dated November 19, 2015 described a DCFS social worker's interview with Father on November 11, 2015. When asked about his claim of Cherokee heritage, Father stated that he did not know about it, and "there is no one in his family that knows either." Father explained that he was the first generation of his family born in the United States; his mother and her family are from Sinaloa, Mexico, and his father and his family are from Sonora, Mexico. When the social worker asked why Father had indicated that he might have American Indian heritage, he mentioned the treaty of Guadalupe Hidalgo,

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

and stated that "Mexicans were all in the sense natives to America" and he knew he had an "indigenous background as there were also indigenous tribes in Mexico."

The report further stated that, after interviewing Father and assessing his claims of Indian heritage, "it appears that the father was referring to His Mexican heritage which includes indigenous conquered people from Mexico." Accordingly, the social worker opined, "the [ICWA] does not apply."

On November 23, 2015, after reviewing DCFS's report, the court found that it did not have "reason to know" that the children were Indian, as defined under ICWA, and therefore, the court did not order notice to any tribe or the Bureau of Indian Affairs (BIA). The court further noted that the parents "are to keep [DCFS], their Attorney and the Court aware of any new information relating to possible ICWA status."

On December 7, 2015, the court sustained an amended petition and declared the children dependents, removed them from Father's custody and ordered family maintenance services for the children's mother and enhancement services for Father.

Father timely appealed the court's jurisdictional and dispositional orders on the sole ground that ICWA should have applied to his case.

DISCUSSION

Father argues that ICWA required the dependency court to give notice of the dependency proceedings to Indian tribes. We disagree.

Congress enacted ICWA in 1978 to protect and preserve Indian children and their tribes from the erosion of tribal ties and cultural heritage. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1466-1467.) It 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, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).) In 2007, the state Legislature enacted section 224 et seq. in accordance with ICWA, which provides in relevant part: "If the court, a social worker, or probation officer knows or has reason to know that an Indian

child is involved, any notice sent in an Indian child custody proceeding under this code shall be sent to the minor's parents or legal guardian, Indian custodian, if any and the minor's tribe." (§ 224.2, subd. (a).)

Section 224.3, subdivision (a) places an "affirmative and continuing duty" on the court and county welfare department in a dependency proceeding to "inquire whether a child . . . is or may be an Indian child." Thus, if the court or social worker knows or has reason to know that an Indian child is involved, "the social worker . . . is required to make further inquiry regarding the possible Indian status of the child." (§ 224.3, subd. (c).) After investigation, if the court or social worker "knows or has reason to know" that "an Indian child" is involved, notice must be given to the relevant tribe. (*Ibid*.)

Here, Father submitted a Parental Notification of Indian Status claiming that the children "may have" Cherokee heritage and his mother may have knowledge of it. This triggered the court to order DCFS to investigate Father's claim of "possible Cherokee background." DCFS subsequently investigated Father's claim by interviewing him. In a detailed report, the social worker explained that Father denied his prior claim, and stated that neither he *nor anyone in his family* had knowledge of his alleged Indian heritage. When asked specifically about his claim of Cherokee ancestry, Father stated that he was the first person in his family to be born in the United States, but he knew he had indigenous heritage going back to the tribes in Mexico. Based on this investigation, DCFS reported to the court that the ICWA did not apply. The court agreed and ordered that notice was not required because it "does not have reason to know" that an Indian child was involved in the case.

Father now concedes in his brief before our court that remarks he made during his interview with the social worker "may seem to be inconsistent with his claim of Cherokee heritage," but argues, nonetheless, that the social worker had a duty to inquire further and interview his mother. But Father, himself, stated that no one in his family—which would include his mother—had knowledge of his alleged Cherokee heritage.

Moreover, Father continued to explain to the social worker that his claim of Indian heritage derived from his belief that the indigenous people of Mexico were somehow related to the Indian tribes of the United States recognized under ICWA because they are all Native Americans. No evidence supports this assumption. Accordingly, the court properly found that ICWA did not apply to the case.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.