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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.V., a Person Coming Under
the Juvenile Court Law.

B294685

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. Nos. 18CCJP01726,
18CCJP01729)

Plaintiff and Respondent,

v.

R.V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Kim L. Nguyen, Judge. Affirmed and remanded with directions.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The juvenile court asserted jurisdiction over R.V. and her half siblings, R.W.V. and R.L.V., and made various orders at a six-month review hearing. The children's father (Father) contends the court and the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with the requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We previously directed DCFS and the court to comply with ICWA in connection with a prior appeal in R.V.'s case. They have not done so. Accordingly, we affirm the orders and once again remand the matters for the juvenile court and DCFS to comply with ICWA.

FACTUAL AND PROCEDURAL BACKGROUND¹

On March 15, 2018, DCFS filed two dependency petitions alleging R.V., R.W.V., and R.L.V. are persons described by Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).² The petitions alleged, among other things, that Father physically abused R.L.V. and R.V., has substance abuse issues, and engaged in violent altercations with R.W.V. and R.L.V.'s mother in their presence.³

¹ We take some of the background facts from our prior nonpublished opinion in R.V.'s case, *In re R.V.* (Jan. 3, 2019, B290210) [nonpub. opn.].

² All further unspecified statutory references are to the Welfare and Institutions Code.

³ Due to the nature of the issue raised on appeal, it is unnecessary to set forth the facts underlying the juvenile court's findings and orders that do not relate to ICWA.

In connection with the dependency proceedings, Father completed a Parental Notification of Indian Status form, which indicated his father (paternal grandfather) and grandmother (paternal great-grandmother) may have been members of the Omaha tribe. Father provided their full names. R.V.'s mother⁴ also completed a Parental Notification of Indian Status form indicating she may have Cherokee ancestry through her father (maternal grandfather).

At a detention hearing, Father clarified that paternal great-grandmother was registered with the Sioux, Omaha, or Pawnee tribes. The court found it had reason to believe R.V., R.W.V., and R.L.V. are Indian children, and ordered DCFS provide notice to several tribes and the Bureau of Indian Affairs (BIA).

Father subsequently provided a DCFS social worker information for some of his family members who may have more information about his Indian heritage. The social worker then spoke to paternal grandfather, who said he would look into whether there was Indian heritage in his family.

On April 10, 2018, the court sustained the amended petitions in part and made various dispositional orders. The court did not discuss or make any express findings with respect to ICWA.

Father appealed the orders in R.V.'s case. His sole contention was that the juvenile court and DCFS failed to comply with ICWA. DCFS conceded it made insufficient inquiry into R.V.'s possible Indian status and failed to provide any notice to the relevant tribes or the BIA. In a nonpublished opinion, we

⁴ R.V. has a different mother than R.W.V. and R.L.V.

remanded the case with the direction that the juvenile court order DCFS to comply fully with ICWA's inquiry and notice requirements. (*In re R.V.*, *supra*, B290210.)

On September 25, 2018, DCFS sent ICWA notices related to R.L.V. to several tribes and the BIA. The notices listed R.L.V.'s mother's name and date of birth, Father's name, current address, and date of birth, and the names of the paternal grandparents. They provided no information for paternal great-grandparents, through whom Father claimed possible Indian heritage.

On October 23, 2018, DCFS sent ICWA notices related to R.V. to several tribes and the BIA. The notices listed R.V.'s mother's name and current address, Father's name, current address, and date of birth, the full names of paternal grandparents and one paternal great-grandmother, and the first name of one paternal great-grandfather. The notices did not include the name of the paternal great-grandmother through whom Father claimed possible Indian heritage. They also provided no information related to R.V.'s mother's family, even though the mother claimed Indian heritage through maternal grandfather.

The record contains no ICWA notices related to R.W.V.

On December 3, 2018, the juvenile court held a six-month review hearing (§ 366.21, subd. (e)), at which Father requested the children be returned to his home or, alternatively, the court order unmonitored visits. The court found continued jurisdiction was necessary, ordered continued reunification services, and denied Father's requests. The court did not discuss DCFS's compliance with ICWA.

Father timely appealed the orders in both cases, which we consolidated.

DISCUSSION

On appeal, the sole issue raised by Father is ICWA compliance. DCFS filed a “concession letter” in lieu of a respondent’s brief, indicating it does not object to the matter being remanded to ensure compliance with ICWA. We agree that remand is necessary.

ICWA was enacted “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of 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.) To that end, “[w]hen a court ‘knows or has reason to know that an Indian child is involved’ in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child’s tribe notice of the pending proceedings and its right to intervene.” (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538, quoting 25 U.S.C. § 1912(a).) “One of the primary purposes of giving notice to the tribe is to enable it to determine whether the minor is an Indian child.” (*In re S.M.* (2004) 118 Cal.App.4th 1108, 1115.)

Federal and California law separately mandate specific information be included in ICWA notices. Federal law requires inclusion of the “child’s name, birthdate, and birthplace,” (25 C.F.R. § 23.111(d)(1) (2019)), “[a]ll names known . . . of the parents, the parents’ birthdates and birthplaces . . .” (*id.*, § 23.111(d)(2) (2019)), and “if known, the names, birthdates,

birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents,” (*id.*, § 23.111(d)(3) (2019)). California law similarly requires the notices include the “names known” of the minor’s “biological parents, grandparents, and great-grandparents, or Indian custodians . . . as well as their current and former addresses, birth dates, places of birth and death, tribal enrollment information . . . and any other identifying information, if known.” (§ 224.3, subd. (a)(5)(C).)

DCFS has an affirmative duty to interview the minor’s parents and extended family members to gather information required for the ICWA notice. (§ 224.3, subd. (c); Cal. Rules of Court, rule 5.481(a)(4)(A); *In re Breanna S.* (2017) 8 Cal.App.5th 636, 652; *In re S.M.*, *supra*, 118 Cal.App.4th at p. 1116; *In re Louis S.* (2004) 117 Cal.App.4th 622, 630.) It is particularly important that DCFS obtain and provide information to the tribes related to the minor’s ancestors with potential Indian heritage. (*In re Louis S.*, *supra*, at p. 631.) “Because ‘failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, [ICWA] notice requirements are strictly construed.’” [Citation.]” (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

Here, the parties agree, as do we, that DCFS failed to comply with ICWA’s inquiry and notice requirements. The ICWA notices related to R.V. and R.L.V. were clearly deficient, as they lacked necessary information that DCFS had in its possession or could have obtained readily. The record contains no ICWA notices related to R.W.V.

The appropriate remedy in this situation is to affirm and remand the matters to the juvenile court with direction to ensure the ICWA requirements are satisfied.⁵ (See *In re Damian C.* (2009) 178 Cal.App.4th 192, 199–200; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 186–188.) If, after proper notice has been given, it is determined that any of the children are Indian children within the ambit of ICWA, the children, their parents, or their tribes may petition the dependency court to vacate its prior orders, if warranted. (*In re Damian C.*, at pp. 199–200; *In re Veronica G.*, at pp. 186–188.)

DCFS urges us to specifically direct “the juvenile court to order [DCFS] to interview Father and obtain ancestry information on his mother, such as name, date of birth, and so on, as well as information on the paternal grandfather, in the event that the paternal grandfather is not cooperative. In addition, [DCFS] should interview [R.V.]’s mother with regard to all information she might be able to provide with regard to her alleged Cherokee heritage. [DCFS] should try to obtain information from the paternal grandfather regarding the paternal great-grandmother’s heritage as well. Once the necessary information has been obtained, [DCFS] should be ordered to provide ICWA notices with the updated information to the Omaha and Cherokee tribes.”

⁵ Father urges us to instead conditionally reverse the juvenile court’s orders pending DCFS’s compliance with ICWA. Conditional reversal for failure to comply with ICWA, however, is required only of orders terminating parental rights. (*In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 187.) Here, Father’s parental rights have not been terminated.

We agree that DCFS should take these steps. It should also take any additional steps necessary to comply with its duties under ICWA. The juvenile court, in turn, must ensure that DCFS does so.

DISPOSITION

The orders are affirmed. The matters are remanded to the juvenile court with direction to order that DCFS fully comply with ICWA's inquiry and notice requirements, consistent with this opinion.

BIGELOW, P. J.

We concur:

GRIMES, J.

STRATTON, J.