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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JOSHUA B., a Person Coming
Under the Juvenile Court Law.

B289016

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK23695)

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Steven Ipson, Juvenile Court Referee. Affirmed and remanded with directions.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court asserted jurisdiction over Joshua B. after finding his mother, M.M. (Mother), had an unresolved history of substance abuse. Mother challenges the court's subsequent dispositional order requiring that she undergo an Evidence Code section 730 mental health evaluation. She also contends the juvenile court erred in finding the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) does not apply to this case and by failing to ensure the Los Angeles County Department of Children and Family Services (DCFS) complied with ICWA's inquiry and notice requirements. We affirm the dispositional order and remand the matter for the juvenile court and DCFS to comply with ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

Joshua first came to DCFS's attention in July 2014, when he tested positive for methamphetamines at birth. During a DCFS investigation, Mother admitted using methamphetamine in the past, but said she stopped when she was six-weeks pregnant. Mother could not explain how Joshua tested positive for the drug.

In June 2017, DCFS was notified that Joshua's father, D.B. (Father), left Joshua in a car while he robbed a tobacco store, vandalized a cell phone store, and assaulted two people. Father was arrested and Joshua was released to his paternal grandmother. Joshua was two years old at the time.

Paternal grandmother told DCFS that Joshua had been living with her and Father since January 2017. She reported that Mother uses methamphetamine and had previously abandoned Joshua with "random people." Paternal grandmother did not know where Mother was currently living.

DCFS located Mother in Las Vegas and interviewed her in July 2017. Mother said she left Joshua with his maternal grandmother at the beginning of the year, and asked maternal grandmother to care for Joshua for one to three months. Mother was not aware that Joshua had been living with Father.

Mother admitted having issues with methamphetamine in the past. She said she had completed two drug rehabilitation programs, but relapsed after each. Mother reported she stopped using methamphetamine six months ago and did not plan to use the drug again.

Father reported that he and Mother had an “on and off” relationship, and Mother constantly moved around. According to Father, Mother has “a lot of mental health issues and needs help.”

On August 15, 2017, DCFS filed an amended petition asserting Joshua is a person described by Welfare and Institutions Code section 300, subdivision (b)(1).¹ The petition alleged that Father placed Joshua in an endangering situation by engaging in a violent encounter in his presence and leaving him unsupervised. In addition, Father’s alleged substance abuse, violent conduct, and neglect placed Joshua at risk of harm. The petition further alleged that Mother has a history of drug abuse, which placed Joshua at risk of physical and emotional harm.

On February 14, 2018, DCFS filed a supplemental report in the juvenile court. At the court’s request, the report included maternal grandmother’s child welfare history, which documented Mother’s mental health history as a minor. According to the report, when Mother was around five years old, she suffered a

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

“psychotic break” caused by medication. At age nine, Mother was diagnosed with oppositional defiance disorder. Between the ages of 11 and 14, Mother was hospitalized three times for psychiatric reasons and diagnosed with various mental health conditions, including major depressive disorder, psychotic disorder, and bipolar disorder. When Mother was 14 years old, she was referred for special education services due to “mental health issues.” At age 17, Mother was found to be emotionally disturbed.

The court held a combined jurisdiction and disposition hearing on February 18, 2018. The court sustained the amended petition with modifications,² found ICWA does not apply, and declared Joshua a dependent of the court. The court removed Joshua from his parents’ custody and granted them reunification services.

DCFS requested the court also order Mother undergo an Evidence Code section 730 psychiatric evaluation (section 730 evaluation)³ to help determine what services she may need to reunify with Joshua. Mother argued the evaluation was unnecessary and it may be difficult for her to obtain services to

² With respect to Mother, the court found true allegations that she “has a history of illicit drug abuse and an unresolved history of methamphetamine use which renders [her] incapable of providing regular care for [Joshua].”

³ Evidence Code section 730 provides: “When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required.”

address mental health issues. The court rejected Mother's arguments and ordered she undergo an evaluation covering "case issues and mental health."

Mother timely appealed.

DISCUSSION

I. The Court Did Not Abuse Its Discretion in Ordering a Section 730 Evaluation

Mother challenges the juvenile court's order requiring that she undergo a section 730 mental health evaluation. She contends an evaluation is not necessary to address her substance abuse, which was the condition that led the court to find that Joshua is person described by section 300. She also contends there is no evidence showing she currently suffers from mental illness. We find no abuse of discretion.

"The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104; see § 362, subds. (a) & (d).) To that end, the court may use a section 730 evaluation as an information-gathering tool to ascertain which services will eliminate the conditions leading to dependency. (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 202.) "Where, as in this case, the jurisdictional finding is not based on a parent's mental disability, the juvenile court may rightly look to the circumstances underlying the dependency and the evidence of the parent's conduct in deciding whether to order one or more mental health evaluations." (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 840.)

We review the juvenile court's order for an abuse of discretion. (See *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084 [court decision whether to appoint an expert witness under section 730 is a matter of discretion].) "To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." (*In re Joey G.* (2012) 206 Cal.App.4th 343, 346.)

Here, the juvenile court reasonably concluded a section 730 evaluation was appropriate to determine whether Mother was suffering from mental illness and what services would eliminate the conditions leading to the dependency. The record shows that Mother has a significant history of mental illness, including multiple hospitalizations for psychiatric issues and diagnoses of major depressive disorder, psychotic disorder, and bi-polar disorder.⁴ Although Mother was a minor when hospitalized and

⁴ Mother urges us to disregard most of the information contained in DCFS's supplemental report related to her mental health history. She points to the lack of supporting documentation or references to sources, asserts that some of the entries in the report are inconsistent, and speculates that maternal grandmother may have provided DCFS inaccurate information due to a personal animus against Mother. These arguments go to the weight of the evidence, rather than its admissibility. On appeal, however, we do not reweigh the evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Instead, "[u]nder the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Here, the information in DCFS's

diagnosed with these conditions, her history of mental illness is not so remote as to be irrelevant. Mother was only 22 years old at the time of the disposition hearing, and there is nothing in the record to indicate she received adequate treatment to address the significant mental health issues she experienced as a minor. Moreover, in June 2017, Father said Mother continued to have mental health issues and needed help to deal with them.

Although there were no allegations in the petition related to Mother's mental health, it is reasonable to suspect that mental illness may be an underlying cause of, or a contributing factor to, Mother's methamphetamine use. If so, a mental health examination would help ensure Mother receives proper services to address her substance abuse, which was one of the primary conditions that led the court to find Joshua is a person described by section 300. The need to identify and address the underlying causes of Mother's substance abuse is particularly important in this case given Mother's history of failed attempts at rehabilitation. The trial court did not act outside the bounds of reason in ordering a section 730 evaluation as an information gathering tool to determine what additional services might help Mother reunify with Joshua.

II. DCFS Failed to Comply with ICWA

Mother contends the juvenile court erred in finding ICWA does not apply and by not ensuring DCFS complied with ICWA's inquiry and notice requirements. We agree.

supplemental report was sufficient to support a finding that Mother has a significant history of mental illness.

A. Background

In July 2017, Mother informed a DCFS investigator that she may have American-Indian ancestry through her biological father (maternal grandfather), whom she “barely knew.” The investigator attempted to contact the maternal grandmother to obtain more information about Joshua’s Indian ancestry, but the grandmother had not responded as of August 15, 2017. The investigator said she would provide updated information to the court once available.

On August 30, 2017, Mother filed a notice indicating she may have Cherokee or Apache ancestry through maternal grandfather. Mother said she was not in contact with him. The same day, the court ordered DCFS to initiate an ICWA investigation.

In September 2017, DCFS mailed ICWA notices to three federally-recognized Cherokee tribes and eight federally-recognized Apaches tribes. The notices included names and birthdates for Joshua, Mother, Father, maternal grandmother, and maternal grandfather. They also listed Mother’s place of birth and current address, and Father’s current address. DCFS received responses from nine tribes indicating Joshua was not a tribal member or eligible for tribal membership based on information provided in the notices. The other two tribes did not respond.

At the disposition hearing, the court found ICWA does not apply.

B. Relevant Law

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)), “[a]ll names known . . . of the parents, the parents’ birthdates and birthplaces . . . ” (*id.* § 23.111(d)(2)), 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)). 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, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.” (Prob. Code, § 1460.2, subd. (b)(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 Indian heritage. (*In re Louis S.*, 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.)

C. Analysis

We agree with Mother that DCFS failed to comply with ICWA's inquiry and notice requirements. The ICWA notices lacked numerous pieces of information required under federal and state law, including Joshua's birthplace, Father's birthplace and former addresses, Mother's former addresses, and maternal grandmother's current address, former addresses, and birthplace. This information was either in DCFS's possession or readily obtainable. Social workers spoke with Mother, Father, and maternal grandmother on multiple occasions in connection with the proceedings, and it is highly doubtful the social workers could not obtain basic biographical information from them. We also suspect DCFS was aware of Joshua's birthplace given it appears a social worker interviewed Mother in the hospital shortly after she gave birth to him.

More importantly, the notices contained very little information related to maternal grandfather, and no information related to his parents (Joshua's great grandparents). Because Mother claimed Indian ancestry through maternal grandfather, DCFS's failure to include this information likely impacted the

tribes' ability to conduct a meaningful search of records to determine whether Joshua was an Indian child. The notices were plainly deficient. (See *In re S.M.*, *supra*, 118 Cal.App.4th at p. 1116; *In re Jennifer A.* (2002) 103 Cal.App.4th 692, 705; *In re D. T.* (2003) 113 Cal.App.4th 1449, 1455.)

DCFS suggests it was unable to obtain the missing information because the maternal grandfather was estranged from the family. Maternal grandfather's estrangement, however, does not explain DCFS's failure to include requisite information related to Joshua, Mother, Father, and maternal grandmother. Moreover, despite the estrangement, we think it likely maternal grandmother could have provided DCFS additional information about maternal grandfather, such as his prior addresses and birthplace. Maternal grandmother also likely knew, at a minimum, the names of maternal grandfather's parents.

Despite the importance of information related to maternal grandfather and his family, the record shows only a single attempt from a DCFS investigator to contact maternal grandmother to obtain such information. Although the investigator suggested she would follow up with maternal grandmother, there is nothing in the record showing she did so. Nor is there any indication that DCFS attempted to locate maternal grandfather or obtain his information through alternative means. On this record, we cannot say DCFS conducted an adequate inquiry to obtain the requisite information for the ICWA notices. (See *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 652; *In re D. T.*, *supra*, 113 Cal.App.4th at p. 1455.)

Given the record does not show compliance with ICWA's inquiry and notice requirements, the court erred in finding ICWA does not apply. The appropriate remedy in this situation is to remand the matter to the juvenile court to ensure those requirements are satisfied. (See *In re Damian C.* (2009) 178 Cal.App.4th 192, 200; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 186–188.) If, after proper notice has been given, it is determined that Joshua is an Indian child within the ambit of ICWA, Joshua, his parents, or his tribe may petition the dependency court to vacate its prior orders, if warranted. (*Ibid.*)

DISPOSITION

The juvenile court's dispositional order is affirmed. The matter is remanded to the juvenile court with directions to order DCFS to fully comply with ICWA's inquiry and notice requirements.

BIGELOW, P.J.

We concur:

GRIMES, J.

DUNNING, J.*

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