Filed 5/15/18 In re E.F. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re E.F., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B284896 (Super. Ct. No. 1436137) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. D.F., Defendant and Appellant.	

D.F. (Mother) appeals an order terminating her parental rights to E.F. (Welf. & Inst. Code, § 366.26.)[1] She contends the juvenile court abused its discretion and denied her due process by refusing to conduct a contested hearing on the

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

beneficial parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)), and the court erroneously relied on inaccurate and incomplete notices to determine that the Indian Child Welfare Act (ICWA) does not apply (25 U.S.C. § 1901 et seq.). We affirm.

FACTUAL AND PROCEDURAL HISTORY

E. lived with Mother and Mother's domestic partner until she was four years old. Mother suffered from untreated mental illness and used methamphetamine. Mother's partner verbally abused E. and used heroin. Mother and her partner engaged in domestic violence in E.'s presence. After a long series of referrals to Santa Barbara County Child Welfare Services (CWS), a teacher overheard the partner say to E., "Do we have to beat you until CWS takes you away to get you to behave?" and a neighbor saw the partner standing over E. in a threatening manner. E. was removed in July 2014 and placed in protective custody. The court found true allegations that Mother failed to protect E., among other things.

In July 2014, Mother stated she may have Indian heritage on her mother's side. CWS investigated and the maternal aunt reported that the maternal great-great-grandmother was an enrolled member of the Santa Ynez Band of Chumash tribe (Chumash). CWS sent an ICWA notice to the Chumash, the Bureau of Indian Affairs (BIA), and the Secretary of the Interior. The Chumash responded that E. is not enrolled and is not eligible for enrollment.

The court found that ICWA does not apply. In September 2014 it declared E. to be a dependent of the court. It ordered CWS to provide reunification services to Mother,

including monitored visits four times weekly, contingent on her sobriety.

About 10 months after E. was removed, Mother regained sobriety and began visiting E. regularly. By August 2015, Mother had progressed to unsupervised visits and was living in a residential drug treatment center. E. was returned to Mother's care under a family maintenance plan.

A year later, Mother relapsed. In September 2016, E. was removed again. She has not returned to Mother's care. In December 2016, the court sustained allegations that Mother is unable to care for E. It adopted CWS's recommendation that reunification services be terminated.

The court set a hearing for April 2017 to select a permanent plan for E. It ordered supervised visits for Mother in the interim. In March, CWS recommended termination of parental rights and a permanent plan of adoption.

Mother contacted CWS and reported that the maternal great-grandmother may have been a member of the Pit River Tribe. She said she had a letter to prove it, but did not provide the letter. At the date scheduled for the section 366.26 hearing, the court put Mother under oath and cautioned her that if she was lying to delay the hearing, there would be consequences. Mother testified that, a few weeks earlier, her mother sent her a text image of a letter from the Pit River Tribe with maternal great-grandmother's tribal roll number. Mother said she had the image on her phone, but did not bring her phone, and could not contact her mother. The court ordered Mother to produce the image to CWS by the close of business that day. It continued the permanency planning hearing.

From CWS's notes, it appears the original letter was never provided, although a "screen shot" may have been provided that CWS suspected may not have been authentic. CWS gathered information from relatives and other sources about the maternal great-grandmother, and sent an ICWA notice to the Pit River Tribe and other tribes, the BIA and the Secretary of the Interior. The tribes all responded that E. is not enrolled and is not eligible for enrollment.

In May, CWS and E.'s advocate requested that visits with Mother be terminated because they were causing E. stress. The court asked for an opinion from E.'s therapist, but she declined to give one. Another therapist met with Mother and E. and opined that the visits were detrimental.

Before the continued permanency planning hearing, Mother filed an offer of proof, and an augmented offer of proof, that the beneficial parent-child relationship exception to termination of parental rights applies. (§ 366.26, subd. (c)(1)(B)(i).) She offered to testify that she had been sober for eight months and had affordable housing. She was employed full-time, addressing her mental health issues, stable on medication and undergoing therapy. She believed that her relationship with E. was an important benefit to the child. She submitted excerpts of CWS reports about the quality of her visits with E., and to support her contention that her social worker is biased against her. They included an e-mail in which the social worker wrote that, "[p]arental rights will be terminated; however, the case is dragging and the mother was ordered to continue with visitation" (underscoring omitted) and "[w]e could not get a statement from the assigned therapist saying that visitation is

detrimental." The e-mail asked that another therapist, "provide an opinion as to whether or not visitation is detrimental."

At the permanency planning hearing, the court found that Mother did maintain regular visits with E., but denied her request for an evidentiary hearing on the exception because her offer of proof was not sufficient to establish a beneficial bond. The court terminated Mother's parental rights and ordered a permanent plan of adoption.

DISCUSSION

The Beneficial Parental Relationship Exception

The juvenile court did not abuse its discretion or deny Mother due process of law when it denied her request for a contested hearing on the beneficial parental relationship exception. Her offer of proof raised no relevant contested issue.

After reunification services are terminated, the parents' interest in the care, custody and companionship of the child is no longer paramount; the focus shifts to the needs of the child for permanency and stability. (*In re K.C.* (2011) 52 Cal.4th 231, 236.) The juvenile court must terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless it finds a compelling reason for determining that termination would be detrimental to the child due to a statutory exception. (§ 366.26, subd. (c)(1).)

The beneficial parental relationship exception requires the parent to show "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A parent who has not reunified with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship

maintained during periods of visitation with the parent, or that the parental relationship may be beneficial to the child only to some degree. (*Ibid.*) The parent who asserts the exception bears the burden to establish that "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The exception applies only in extraordinary cases, because the permanent plan hearing occurs after the court has repeatedly found the parent is unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The trial court may request an offer of proof regarding exceptions to the termination of parental rights. (*In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053.) "[I]t does not violate due process for a trial court to require an offer of proof before conducting a contested hearing on one of the statutory exceptions to termination of parental rights." (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

Mother's offer of proof did not raise any relevant contested issue for hearing. That she was employed, housed, and had been sober for eight months is laudable. All parties agree she visited E. whenever she was permitted, and interacted with her in a loving and attentive way. But frequent and loving contact, pleasant visits, and an emotional bond are not enough to establish the exception. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show that he or she occupies a "'parental role'" in the child's life. (*Ibid.*)

Mother points out that E. lived with her for five years before removal, and also during a period of reunification with family maintenance services. But E. was unable to rely on

Mother to fulfill her parental role when they lived together, as evidenced by her removal on two occasions. And Mother does not allege any facts from which the court could conclude that she presently occupies a parental role. The social worker's excerpted e-mail could be interpreted as non-neutral, but even if she were biased this is not evidence of a beneficial bond. Mother's offer to testify that she "enjoys seeing her child grow and thrive," believes E. also enjoys the visits, and "believes the visits are beneficial for the child so [she] will continue to know who her family is, and that she will not feel as if she has been abandoned by her birth family," even if proven true, are not sufficient to establish the exception applies. The juvenile court did not abuse its discretion under these circumstances.

ICWA

The notices upon which the trial court's ICWA findings rely substantially complied with ICWA.

The juvenile court and the social services agency must provide notice under ICWA when "the court knows or has reason to know that an Indian child is involved. . . ." (25 U.S.C. § 1912(a).) An "Indian child" is one who is either a "member of an Indian tribe or . . . 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 notice . . . must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great[-]grandparents, and other identifying information; and (4) a copy of the dependency petition. [Citation.]" (*In re Francisco W.* (2006) 139 Cal.App.4th

695, 703.) "It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the one with the alleged Indian heritage. [Citation.]" (*Ibid.*; *In re C.D.* (2003) 110 Cal.App.4th 214, 224-225.)

We review errors and omissions in the ICWA notices under the harmless error standard. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402-403.) Technical compliance with the notice requirements may not be required where there has been substantial compliance. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1531.) "The purpose of the ICWA notice provisions is to enable the tribe or the BIA to investigate and determine whether the child is in fact an Indian child. [Citation.] Notice given under ICWA must therefore contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership. [Citations.]" (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576.)

Mother contends we must reverse for noncompliance with ICWA. She contends the 2014 notice to the Chumash tribe was insufficient because it omitted her place of birth, maternal grandmother's date of birth and addresses, and maternal great-grandmother's place of birth, date of birth, and addresses. She contends the 2017 notice to the Pit River Tribe misstates the maternal grandmother's date of birth, misstates maternal great-grandmother's place of birth, omits both of their middle names, does not provide all addresses, and does not indicate they have possible Chumash heritage.

But the notices contained enough information for the tribes to conduct a meaningful review of their records. The notices included E.'s name, birthplace, and birth date, the name of the tribes in which she might be eligible for enrollment, the

names and addresses of her parents, grandparents and great-grandparents with the exception of the middle names and addresses previously noted, and a copy of the petition. The 2017 notice did not indicate possible Chumash heritage, but CWS's most recent information did not indicate Chumash heritage. The tribe had already reported that E. is not eligible for enrollment. The remaining omissions and inaccuracies in the ICWA notices are minor. There is no basis to believe that inclusion of the missing details would have produced different results concerning E.'s Indian heritage. The information provided in the notices was sufficient to allow the tribes to conclude that E. is neither enrolled nor eligible for enrollment. (*In re Cheyanne F.*, *supra*, 164 Cal.App.4th at p. 576.) Although the notices were technically deficient in minor respects, reversal is not required because any error was harmless. (*In re E.W.*, *supra*, 170 Cal.App.4th at pp. 402-403.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Michael C. Ghizzoni, County Counsel, Christopher E. Dawood, Deputy County Counsel, for Plaintiff and Respondent.