Filed 8/15/18 In re J.L.C. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 J.L.C., et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B288581 (Super. Ct. Nos. J070928, J070929, J070930) (Ventura County)
VENTURA COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. JESSICA L., Defendant and Appellant.	

Jessica L. appeals from a juvenile court order terminating her parental rights to minors, J.L.C., L.M.C., and L.A.C. (Welf. & Inst. Code, § 366.26.)[1] Appellant contends that respondent, Ventura County Human Services Agency, failed to comply with the notice provisions of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and California related statutes (§ 224 et

[1] Unless otherwise noted all statutory references are to the Welfare and Institutions Code.

seq.). We conclude that notice was not provided to the Blackfeet Indian Tribe and conditionally reverse for the limited purpose of complying with the notice provisions of ICWA. (*In re Justin S.* (2007) 150 Cal.App.4th 1426, 1437-1438; *In re Francisco W.* (2006) 139 Cal.App.4th 695, 711.)

Facts and Procedural History

In March 2016, Ventura County Human Services Agency (HSA) detained appellant's children due to appellant's mental health, substance abuse, and domestic violence issues. HSA filed a petition for failure to protect (§ 300, subd. (b)), sexual abuse (§ 300, subd. (d)), and no provision for support (§ 300, subd. (g)), alleging that the children's presumed father, R.C. Jr., had a history of substance abuse and domestic violence, and had sexually abused the children's half-sibling. At the detention hearing, appellant declared that she had no Indian heritage. Father stated that he might have Indian ancestry with the Blackfoot or Mohawk tribe. HSA mailed an ICWA-030 notice to the Bureau of Indian Affairs and the Saint Regis Band of Mohawk but no notice was sent to the Blackfoot tribe. In June 2016, the Mohawk tribe responded that the children were not enrolled members or eligible for enrollment. The trial court found that proper notice was given and that ICWA did not apply, declared the children wards of the court, and ordered reunification services.

In October 2016, a few weeks after the six-month review hearing, father committed suicide. Reunification services were terminated at the 18-month review hearing based on appellant's failure to comply with the case plan and stay sober. On February 22, 2018 the trial court terminated parental rights and freed the children for adoption. (§ 366.26.)

ICWA

ICWA was enacted to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards a state court must follow before removing an Indian child from his or her family.[2] (25 U.S.C. § 1902; see *In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) Notice to federally recognized Indian tribes is central to effectuating ICWA's purpose of enabling a tribe to determine whether the child in a dependency proceeding is an Indian child and, if so, whether to intervene or exercise jurisdiction over the matter. (*Ibid.*) The question of whether a tribe is federally recognized and subject to ICWA notice is determined by the Department of Interior, which periodically publishes a list of federally recognized tribes in the Federal Register. (See *In re J.T.* (2007) 154 Cal.App.4th 986, 992.) We have taken judicial notice of the list. (82 Fed.Reg. 4915-03 (Jan. 17, 2017); Evid. Code, §§ 452, subd. (c), 459, subd. (a); e.g., *In re N.M.* (2008) 161 Cal.App.4th 253, 268, fn. 9 [taking judicial notice of tribes' current addresses in Federal Register to determine whether ICWA notice given].)

Blackfoot or Blackfeet?

Father declared that he had possible Indian heritage with the Blackfoot or Mohawk tribe. HSA argues that the Blackfoot tribe is not a federally recognized tribe and that HSA was not required to send ICWA notice to the tribe. (25 U.S.C. § 1903(8);

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[2] Under ICWA, "'Indian child' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is 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); see Welf. & Inst. Code, § 224.1, subd. (a) [adopting federal definitions].)

In re K.P. (2009) 175 Cal.App.4th 1, 5 [ICWA notice provisions apply only to federally recognized tribes].) The Federal Register list of federally recognized Indian tribes does, however, state that the "Blackfeet Tribe of the Blackfeet Indian Reservation of Montana" is a federally recognized Indian tribe. (82 Fed.Reg. 4915-03 (Jan. 17, 2017).)

The tribal names "Blackfeet" and "Blackfoot" are often used interchangeably[3] (see, e.g., *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1382, fn. 3; *In re L.S., Jr.* (2014) 230 Cal.App.4th 1183, 1197–1198 [discussing "Blackfoot/Blackfeet confusion"]) and there is nothing in the record to indicate that father knew the difference when he said he may have "Blackfoot" heritage. "[T]here is frequently confusion between the Blackfeet tribe, which is federally recognized, and the related Blackfoot tribe, which is found in Canada and thus not entitled to notice of dependency proceedings. When Blackfoot heritage is claimed, part of the Agency's duty of inquiry is to clarify whether the parent is actually claiming Blackfoot or Blackfeet heritage so that it can discharge its additional duty to notice the relevant tribes. Once the facts are clear, the juvenile court will be able to make the appropriate finding regarding the applicability of the ICWA to this case." (*Id.* at p. 1198.)

That was not done and father is no longer alive to clarify what he meant when he said that he may have "Blackfoot" heritage. It is settled that the ICWA notice requirements serve the interests of the Indian tribes and may not be waived by a

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[3] "Blackfoot" is defined as the singular of "Blackfeet or Blackfoot" and is "a member of an American Indian people of Montana, Alberta, and Saskatchewan." (Merriam-Webster's Collegiate Dictionary (10th ed. 1999) p. 119.)

parent. (*In re Justin S.*, *supra*, 150 Cal.App.4th at p. 1435.) HSA is statutorily required to follow the ICWA inquiry and notice requirements. (See §§ 224.2-224.3; Cal. Rules of Court, rules 5.481 & 5.482; *In re W.B.* (2012) 55 Cal.4th 30, 52-53.) "'[O]ne of the primary purposes of giving notice to the tribe is to enable the tribe to determine whether the child involved in the proceedings is an Indian child. [Citation.]' [Citation.] Notice is meaningless if no information is provided to assist the tribes and the BIA in making this determination." (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.)

Disposition

The order terminating parental rights is conditionally reversed and the matter is remanded with directions to file and serve an amended ICWA notice on the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana and the Secretary of the Interior. (See 25 U.S.C. § 1912(a); *In re Isaiah W.*, *supra*, 1 Cal.5th at p. 9 [§ 224.2, subd. (a)(4), requires that any notice sent to a child's parents, Indian custodians, or tribe also be sent to the Secretary of the Interior unless the Secretary has waived notice in writing].) If the tribe does not declare J.L.C., L.M.C., or L.A.C. to be an Indian child or if no timely response is received, the trial court shall reinstate the judgment terminating parental rights. If after proper inquiry and notice, the tribe determines that any of the children is an Indian child as defined by ICWA, the trial court shall proceed in compliance with ICWA and the Welfare and Institutions Code. (*In re Justin S.*, *supra*, 150 Cal.App.4th at pp. 1437-1438; *In re Francisco W.*, *supra*, 139 Cal.App.4th at p. 711.)

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

Joseph T. Tavano, under appointment by the Court of Appeal for Defendant and Appellant.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel for Plaintiff and Respondent.