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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re AR.B. et al., Persons Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARY F.,

Defendant and Appellant.

B258853

(Los Angeles County  
Super. Ct. No. CK56631)

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle Cortez, Judge. Affirmed in part, reversed in part, and remanded with directions.

Maryann M. Goode, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## INTRODUCTION

Mary F. appeals from the order of the juvenile court terminating her parental rights to Autumn M. and Ary.M. (Welf. & Inst. Code, § 366.26.) Her sole contention is that the court erred by not ensuring proper notification under the Indian Child Welfare Act, title 25 of the United States Code section 1901 et seq. (ICWA) (Welf. & Inst. Code, § 224 et seq.), with respect to these two children based on the assertion of their presumed father, Robert M., that he has Indian ancestry. We reverse the order terminating parental rights and remand the case solely for the purpose of ensuring compliance with ICWA.

## FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (the Department) filed a petition on behalf of mother's second and third children, A.C. and Autumn M. because A. had a fractured bone, swelling of the right arm, and a black eye, and Mary failed to provide medical care for more than two weeks. The petition also alleged that Autumn's presumed father Robert M. had a history of drug use and was a current user. (Welf. & Inst. Code, § 300, subds. (b) & (j).) Neither A. nor his older half-sibling Ar. is a subject of this appeal.

Robert completed a Parental Notification of Indian Status form (form JV-130) indicating he may have American Indian ancestry. At the detention hearing, the juvenile court ordered the Department to provide notice to the Bureau of Indian Affairs, the Department of Interior, and to the Navajo Tribes that included "the names of the paternal grandmother, paternal great grandmother and paternal great great grandmother (Eddie H[.], Yolanda C[.] and Jacqueline H[.])."

Apart from one early report reflecting attempts to reach Yolanda C., all of the Department's reports stated that ICWA did not apply or did not apply to mother.

The juvenile court sustained the petition in October 2007 and ordered monitored visits and reunification services for Mary and Robert. Ary.M. was born in December 2007 but was not detained from Mary's care. The court terminated services for Robert within six months and for Mary 11 months later.

Mary successfully petitioned to modify the order terminating services for her. (Welf. & Inst. Code, § 388.) The juvenile court returned A. and Autumn to her care with family maintenance services.

However, a year later, the juvenile court sustained a subsequent petition on behalf of A. and Autumn and a petition on behalf of Ary. (Welf. & Inst. Code, §§ 342 & 300) finding true Mary physically abused A., attempted to hit the social worker with her car with the children inside; engaged in a violent confrontation with an unrelated woman; fled in her car at a high rate of speed without placing the children in child safety restraints. (Welf. & Inst. Code, § 300, subds. (a), (b) & (j).) The court denied Mary reunification services for Ary. based on Mary's failure to reunify with that child's siblings and suspended Mary's contact with the children.<sup>1</sup>

In August 2014, the juvenile court terminated Mary's parental rights to A., Autumn, and Ary. The record contains no finding by the juvenile court whether ICWA applies to Autumn and Ary. based on Robert's ancestry. Mary filed her appeal.

### DISCUSSION

Mary does not challenge the order terminating her parental rights. Her sole assignment of error is that ICWA's notice requirement has not been met with respect to Robert M.'s children, Autumn M. and Ary.M., based on Robert's statements that he has Indian ancestry.<sup>2</sup> The Department concedes it issued no notices pursuant to ICWA (25 U.S.C. § 1912(a)) and does not oppose remand for the limited purpose of assuring proper compliance with that Act.

The responsibility for compliance with ICWA falls squarely and affirmatively on the court and the Department. (Welf. & Inst. Code, § 224.3, subd. (a); *In re Antoinette S.*

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<sup>1</sup> More recently, the Department filed a petition naming Mary's fifth child, Jamil J. However, as with A.C., Jamil J. is not a subject of Mary's appeal.

<sup>2</sup> Mary has standing to raise the issue of ICWA compliance notwithstanding she is not the parent with alleged Indian heritage. (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339; *In re B.R.* (2009) 176 Cal.App.4th 773, 779-780.)

(2002) 104 Cal.App.4th 1401, 1409.)<sup>3</sup> Both Robert and the paternal grandmother stated that there was native American heritage in the family. As early as the detention hearing, the juvenile court ordered the Department to make the necessary inquiries and send the required notices. Thereafter, as everyone acknowledges, the ball was dropped.

When notice is required but not properly given, the juvenile court's orders are voidable. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 174.) As a consequence, the order terminating parental rights must be reversed. (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 739.) Apart from the ICWA-related contention, Mary does not challenge the order terminating her parental rights. (Welf. & Inst. Code, § 366.26.) Therefore, that order is affirmed in all other respects. Under the circumstances, we remand the matter to the juvenile court for the sole and limited purpose of enabling that court to assure that the required notices are properly given and based on the result, determine whether Autumn and Ary. are Indian children. (See *In re Marinna J.*, *supra*, 90 Cal.App.4th at p. 740 [remanding for sole purpose of giving ICWA notice but affirming termination order in other respects]; *Tina L. v. Superior Court* (2008) 163 Cal.App.4th 262, 264.) To avoid further unnecessary delay of permanence for these two children, we urge the juvenile court and the parties to expedite resolution of ICWA requirements on remand. (*In re H.G.* (2015) 234 Cal.App.4th 906, 909-910.)

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<sup>3</sup> Title 25 United States Code section 1912(a) states: "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. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding."

## DISPOSITION

The order of the juvenile court terminating Mary's parental rights to Autumn M. and Ary.M. only is reversed and the matter is remanded to the juvenile court with directions to order the Department to provide proper notice of the proceedings under ICWA to the relevant tribes and to the Bureau of Indian Affairs and the U.S. Department of the Interior. If, after receiving notice, no tribe indicates that the children fall within the meaning of ICWA, then the juvenile court shall reinstate the order terminating parental rights. In all other respects, the order terminating parental rights is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

KITCHING, J.