

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re ROBERT M., A Person Coming  
Under the Juvenile Court Law.

B270863

(Los Angeles County  
Super. Ct. No. CK88422)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Robert S. Draper, Judge. Reversed and  
remanded with directions.

Janette Freeman Cochran, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

---

## INTRODUCTION

Father Robert M. (father) appeals from the juvenile court's order terminating his parental rights as to his son, Robert Alexander M. (Robert), under Welfare and Institutions Code section 366.26.<sup>1</sup> Father does not challenge the substantive findings upon which the termination order is predicated. Instead, father contends the order must be reversed because the Department of Children and Family Services (department) failed to comply with the notice requirement of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.), as well as the provisions of the Welfare and Institutions Code designed to implement it. Although the department made efforts to comply with ICWA in this case, we agree with father that the department failed to provide adequate notice to the relevant Indian tribes. We therefore reverse for the limited purpose of securing full compliance with ICWA's notice provisions.

## FACTS AND PROCEDURAL BACKGROUND<sup>2</sup>

### 1. Case background

Mother Sophia A. (mother) and father are unmarried; their relationship produced a child, Robert M., who was born in December 2010.<sup>3</sup> On June 24, 2011, the department filed a

---

<sup>1</sup> Further unspecified section references are to the Welfare and Institutions Code.

<sup>2</sup> Because all of father's arguments relate to ICWA compliance, we limit our discussion of the facts and procedural history to those aspects of the case directly relevant to that issue.

<sup>3</sup> Mother is not a party to this appeal.

juvenile dependency petition under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support], regarding Robert. The court ultimately sustained the following allegations as to father: “On 06/2011 [*sic*], the [child’s] father, Robert [M.], established a detrimental and endangering situation for the child in that the father possessed methamphetamine within access of the child. On 06/20/2011, the father was arrested for Possession of Methamphetamine. Such a detrimental and endangering situation established for the child by the father endangers the child’s physical health and safety and places the child at risk of physical harm, damage and danger.”

Due to issues relating to mother, the court was unable to hold a dispositional hearing until May 30, 2014. With respect to father, the court ordered family reunification services as well as weekly monitored visitation. The court also ordered father to participate in random drug testing, parenting classes, individual counseling and a drug treatment program. Father failed to comply with the court’s orders.

On August 31, 2015, the court found “that the parents have not consistently and regularly contacted and visited with the minor, that they have not made significant progress in resolving the problems that led to the minor’s removal from the home, and that they have not demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the minor’s safety, protection, physical and emotional well-being, and special needs.” Accordingly, the court terminated reunification services for both parents and set the matter for a hearing under section 366.26. On February 16, 2016, the court terminated parental rights as to both parents and declared Robert’s foster parents as his prospective adoptive parents.

## **2. Inconsistency regarding Robert's first name**

The original petition and the court's detention order, both dated June 24, 2011, identify the child as Alexander M. However, when father completed the ICWA-020 form [Parental Notification of Indian Status], also dated June 24, 2011, he indicated that the child's full name is Robert Alexander M.

The court referred to the child as Alexander M. throughout the proceedings below. Just prior to the final hearing in this case, the department submitted—at the court's request—a copy of the child's birth certificate, which shows his full name as Robert Alexander M. On February 16, 2016, the court declared the minor's true name to be Robert Alexander M.

The department first identified the child as Robert Alexander M. in a due diligence declaration dated August 23, 2011. Later, on November 8, 2011, the department used the child's correct and full name in its jurisdiction report and from that point forward, generally identified the child as Robert Alexander M.

## **3. Father's claim to Indian heritage; ICWA notice**

In response to the department's initial inquiry, father reported that "his family has some Cherokee Indian Heritage from Louisiana but they are not registered." He later told the department that "his family is originally from Baton Rouge, Louisiana," but "they have never been registered with any American Indian Tribe." Father subsequently filed a "Parental Notification of Indian Status" form (ICWA-020) indicating that he may have Indian ancestry. In the space provided for tribal identification, he wrote "Chipewa [*sic*]."

At the detention hearing on June 24, 2011, the court ordered the department to investigate father's claim of American Indian (Chippewa) heritage and provide notice to the appropriate tribes. The department identified 23 Chippewa tribes and sent the Notice of Child Custody Proceeding for Indian Child (ICWA-030) to them on July 13, 2011. The notice states that the child's name is "Alexander M." and provides his date and place of birth. In addition, the notice identifies Robert's parents and provides their addresses. The notice also identifies three out of four of Robert's grandparents by name, but provides few other details. In particular, the notice identifies the paternal grandfather as "Robert [M.], Sr.," but provides no contact information, no date of birth, and no place of birth. In the space provided for "Tribe or band, and location:" the form states only, "Chippewa."

The department received written responses from 14 Chippewa tribes or bands, each of which indicated that Robert is not a member of, and/or is not eligible for membership in, the tribe or band. The department did not file signed certified mail return receipts (commonly referred to as "green cards") confirming delivery to the remaining nine tribes and bands. Instead, it appears the department filed unsigned certified mail receipts with tracking numbers, together with screen shots of corresponding tracking and delivery information from the U.S. Postal Service website.<sup>4</sup> On September 23, 2011, and on the basis of the information provided by the department, the court determined ICWA does not apply.

---

<sup>4</sup> In light of our holding, we do not address father's argument that the notice was also defective because the department did not file return receipt cards with the court.

Father timely appeals from the order terminating his parental rights.

## **CONTENTIONS**

Father contends the order terminating his parental rights must be reversed because the department failed to provide proper notice to the federally registered Chippewa Indian tribes, as required under ICWA.

## **DISCUSSION**

### **1. Standard of review**

“The [trial] court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] We review the trial court’s findings for substantial evidence. [Citation.]’ ” (*In re Christian P.* (2012) 208 Cal.App.4th 437, 451, original brackets.) Failure to give notice under ICWA is subject to harmless error analysis. (*Id.* at p. 452.) A parent does not waive an ICWA notice issue by failing to raise it below. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 849.)

### **2. The department failed to comply with ICWA’s notice requirements.**

#### **2.1. Notice requirements are strictly construed.**

The Supreme Court recently reiterated the importance of ICWA. “Congress enacted ICWA in 1978 in response to ‘rising concern in the mid-1970’s over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through

adoption or foster care placement, usually in non-Indian homes.’ [Citation.]” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7.) “The minimum standards established by ICWA include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights ‘where the court knows or has reason to know that an Indian child is involved.’ (25 U.S.C. § 1912(a).)” (*Id.* at p. 8.)

As our courts have often observed, ICWA’s notice requirements serve two purposes. “First, they facilitate a determination of whether the child is an Indian child under ICWA . . . . [¶] Second, ICWA notice ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child.” (*In re Isaiah W.*, *supra*, 1 Cal.5th at p. 8.) “Because ‘ “the tribe has an interest in the child which is distinct from but on a parity with the interest of the parents” ’ [citation], a tribe has the right to intervene in a state court dependency proceeding at any time [citation].” (*In re Nikki R.*, *supra*, 106 Cal.App.4th at p. 848.) Moreover, because the right to intervene is meaningless unless the tribe receives proper notification, ICWA’s notice requirements are strictly construed. (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 474-475.)

**3. The notice must provide sufficient information to allow a tribe to confirm whether a child is enrolled or eligible to enroll in the tribe.**

Where notification of custody proceedings is required under ICWA, “the notice to a tribe must include a wide range of information about relatives, including grandparents and great-grandparents, to enable the tribe to properly identify the



children's Indian ancestry," if any. (*In re J.D.* (2010) 189 Cal.App.4th 118, 124; § 224.2, subd. (a)(5).) Specifically, the notice must include "[t]he name, birthdate, and birthplace of the Indian child, if known." (§ 224.2, subd. (a)(5)(A).) Also, the notice should include "[t]he name of the Indian tribe in which the child is a member or may be eligible for membership, if known." (§ 224.2, subd. (a)(5)(B).) Further, the notice must include the names (including maiden, married, and former names or aliases), current and former addresses, birthdates, places of birth and death, and tribal enrollment numbers, and/or other identifying information for the Indian child's biological parents, grandparents, and great-grandparents. (§ 224.2, subd. (a)(5)(C).) In short, "[n]otice given by DCFS pursuant to ICWA must contain enough information to permit the tribe to conduct a meaningful review of its records to determine the child's eligibility for membership." (*In re S.E.* (2013) 217 Cal.App.4th 610, 615.)

The department failed to fulfill its ICWA notice obligations in several ways in this case. The greatest defect in the notice is its failure to properly identify the child at issue. The notice identifies the child as "Alexander [M.]," but his full name is "Robert Alexander [M.]" Plainly, a tribe cannot accurately ascertain whether a child is enrolled in the tribe if the name provided is incorrect. (See *In re Louis S.* (2004) 117 Cal.App.4th 622, 631.) On this basis alone, we must remand the matter so that the court can ensure that the department provides proper notice to all Chippewa tribes and bands currently listed in the Federal Register.

We are aware that a remand for ICWA compliance will inevitably delay implementation of the permanent plan of adoption for Robert. Nonetheless, the Chippewa tribes must

have the opportunity to consider the circumstances of this case and exercise their right to participate, should they choose to do so. (See *In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 12-13 [noting early resolution of ICWA notice issues is ideal, but stressing the importance of the tribal right to intervene in dependency proceedings at any time].) In the interest of forestalling any subsequent appeal relating to ICWA compliance, we comment upon another defect apparent from the face of the notice, in order to give guidance to the court and the department upon remand.

As already noted, section 224.3 requires the department to gather and convey a wide range of information about Robert's family to the relevant tribes. (See § 224.2, subd. (a)(5).) Here, much of the statutorily required information is lacking. Specifically, although the department identified Robert M., Sr., (the paternal grandparent) as the relative who has Indian heritage, the department provided no additional information about him, such as a current or former address, or a date and place of birth. Further, it is not evident from the record before us whether the department social worker interviewed father or any of father's relatives in an attempt to procure this critical information. Accordingly, for purposes of remand, we remind the department that "[t]he social worker in a child dependency case is statutorily required to interview the child's parents and extended family members to gather the information required for the ICWA notice. (§ 224.3, subd. (c).) [fn. omitted]" (*In re I.B.* (2015) 239 Cal.App.4th 367, 376; see also *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 ones with the alleged Indian heritage"].) Moreover, we note that although father was able to provide

almost no information about his Indian heritage claim, he did advise the department that his family hails from Baton Rouge, Louisiana. At a minimum, the department should have included that information in its notice to the tribes, and it should do so upon remand.

#### **4. Harmless error analysis**

Father does not argue, nor does the record contain any facts to suggest, he would have obtained a more favorable outcome in the proceedings, had the department provided proper notice to the Chippewa tribes. However, we cannot say that the department's failure to give proper notice to the Chippewa tribes was harmless given that tribal intervention could radically change the course of the proceedings. (See *In re Nikki R.*, *supra*, 106 Cal.App.4th at p. 855 [ICWA error warrants reversal of section 366.26 order and limited remand for compliance with ICWA notice requirements].) Accordingly, we must conditionally reverse the court's order terminating father's parental rights in order to allow the court to conduct such further proceedings as are necessary to resolve the notice issues and make a new determination regarding Robert's status as an Indian child. (*In re Francisco W.*, *supra*, 139 Cal.App.4th at p. 704.) The order is subject to automatic reinstatement if it is ultimately determined that Robert is not an Indian child within the meaning of ICWA. (*In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 908.) This disposition unfortunately results in delay in implementing Robert's permanent plan, but a conditional reversal is necessary to protect and advance the goals underlying ICWA.

## **DISPOSITION**

The February 16, 2016 order terminating father's parental rights is conditionally reversed. On remand, the juvenile court shall require the department to comply with the notice provisions of ICWA. If, after proper notice, a tribe claims Robert is an Indian child, the court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no tribe makes such a claim, the court shall reinstate the order.

## **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

EDMON, P.J.

GOSWAMI, J.\*

---

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