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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re DEVON S., a Person Coming
Under the Juvenile Court Law.

B275726
(Los Angeles County
Super. Ct. No. DK04595)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DESIREE Q. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los
Angeles County, Marguerite Downing, Judge. Remanded.

M. Elizabeth Handy, for Defendant and Appellant Desiree
Q.

Patricia K. Saucier, for Defendant and Appellant Wendel S.
Office of the County Counsel, Mary C. Wickham, County
Counsel, Peter Ferrera, Principal Deputy County Counsel, for
Plaintiff and Respondent.

Desiree Q. (mother) and W.S. (father) appeal from an order terminating their parental rights over their child, Devon S. They contend the juvenile court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) Plaintiff and respondent the Los Angeles County Department of Children and Family Services (the Department) concedes the juvenile court failed to comply with ICWA's notice requirements and does not oppose a remand limited to the issue of ICWA notice compliance. The case is remanded for the limited purpose of ensuring compliance with ICWA's notice requirements. We do not reverse the termination of mother's and father's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

In Los Angeles County Superior Court Case No. DK04595, the Department filed separate Welfare and Institutions Code¹ section 300 petitions with respect to mother and father's children Destiny S. and Devon S. In October 2015, the juvenile court held a section 366.26 hearing and terminated mother's and father's parental rights to Destiny S. In Court of Appeal Case No.

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

B269272,² mother appealed from the termination of her parental rights, contending the juvenile court failed to comply with the notice requirements of ICWA.³ Because father had informed the juvenile court that he might have American Indian ancestry and identified the “Black Foot”⁴ Indian tribe, we held the Department had failed to comply with ICWA’s notice requirements and remanded the matter to the juvenile court for ICWA notice compliance. We did not reverse the termination of mother’s parental rights.

In the case now before us, at a section 366.26 hearing on May 9, 2016, the juvenile court terminated mother’s and father’s parental rights to Devon S. Mother and father appeal. Mother, joined by father, argues the juvenile court failed to comply with ICWA’s notice requirements. Based on our holding in Case No. B269272, the Department filed a letter in this appeal conceding mother’s argument and stating that it does not oppose a remand in order for the Department to provide proper notice to the

² We take judicial notice of our prior unpublished opinion in Case No. B269272.

³ Father was not a party to the appeal.

⁴ As we noted in our prior opinion, “[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 [Department’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.’ (*In re L.S., Jr.* (2014) 230 Cal.App.4th 1183, 1198.)”

Blackfeet Tribe, the Secretary of the Interior, and the Bureau of Indian Affairs with respect to Devon S. The Department asks that we not reverse the termination of parental rights.

We agree that the information father provided to the juvenile court and the Department with respect to Destiny S. concerning father's American Indian heritage was sufficient to trigger ICWA's notice requirements with respect to Devon S. Accordingly, we remand the matter for the Department to comply with ICWA's notice requirements with respect to Devon S. We do not reverse the order terminating mother's and father's parental rights because there has not yet been a sufficient showing that ICWA's substantive protections apply to Devon S. If a tribe later determines that Devon S. is an Indian child, "the tribe, a parent, or [Devon S.] may petition the court to invalidate an action of placement in foster care or termination of parental rights 'upon a showing that such action violated any provision of sections [1911, 1912 and 1913].' (25 U.S.C. § 1914.)" (*In re Damian C.* (2009) 178 Cal.App.4th 192, 200.)

DISPOSITION

The case is remanded for the limited purpose of ensuring compliance with ICWA's notice requirements. We do not reverse the termination of mother's and father's parental rights.

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KUMAR, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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