Filed 8/23/12 In re A.C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.C. et al., Persons Coming Under the Juvenile Court Law.	B237237 (Los Angeles County Super. Ct. No. CK88112)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Affirmed and remanded with directions.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

T.G. (mother) challenges a juvenile court dispositional order placing her two children, A.C. (born Sept. 2000) and D.G. (born Mar. 2004) with their respective fathers and terminating jurisdiction.[1] To the extent mother attacks the juvenile court's dispositional order, we conclude that the juvenile court did not err. However, as for mother's complaint that the Department of Children and Family Services (DCFS) did not comply with the Indian Child Welfare Act's (ICWA) notification requirements, we agree that notice was deficient. Those deficiencies do not compel reversal of the juvenile court's order. Rather, pursuant to *In re Brooke C.* (2005) 127 Cal.App.4th 377, this matter is remanded for the limited purpose of allowing DCFS to provide proper ICWA notice.

The Family

At the time of the relevant events, A.C. and D.G. were residing with mother. A.C.'s father, Henry C. (Henry), was living in Arizona with his new wife, Jessica C. (Jessica), and their son. D.G.'s father, Terrell J. (Terrell) was living in Long Beach.

Welfare and Institutions Code Section 300[2] Petition and Detention

This family came to the attention of DCFS on May 27, 2011, when a referral was received alleging that the children were victims of physical abuse. The referral indicated that D.G. had approached the reporting party, stating that her arm and wrist hurt. D.G. had black and blue marks on her right wrist area and reported that mother had "'whipped'" her because she was playing with her hair. D.G. disclosed that mother had hit her on previous occasions as well.

Children's social worker (CSW) Knight spoke with mother, who admitted that she hit both A.C. and D.G. with a belt the night before. Mother explained that she hit her

---

[1] Because mother and the minors in this case have unusual first names, we will refer to them using their first and last initials to protect their anonymity. (See Cal. Rules of Court, rule 8.401(a)(2).)

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

daughters with a belt as a form of punishment. During the interview, law enforcement officials arrived at the family home and placed mother under arrest.

D.G. was very engaging and upbeat during her interview with the social worker. She did not exhibit any emotional distress while sharing her observations of mother.

A.C. informed CSW Galvan that mother had beaten her with a belt to punish her for "'bad behavior.'" A.C. showed the social worker a bruise that covered her entire upper left arm. Unlike D.G., she was frightened and very emotional when describing the beatings that she received from mother, and she stated that she had other bruises on her leg and backside that were caused by mother hitting her with a belt.

On June 2, 2011, DCFS filed a section 300 petition on behalf of the children, based upon mother's physical abuse of A.C. and D.G. as well as Henry and Terrell's failure to provide their children with the necessities of life. At the detention hearing, the juvenile court found that the children were persons described by section 300, subdivisions (a), (b), (g), and (j) and ordered them detained.

Jurisdiction/Disposition Report

In its June 23, 2011, jurisdiction and disposition report, DCFS reported about the children's fathers. According to mother, neither Henry nor Terrell was really involved with the children. As for Henry, mother informed the social worker that he did not provide for A.C. On the other hand, Jessica stated that A.C. would visit her, Henry, and A.C.'s half-brother every summer in Arizona. In fact, A.C. told Jessica that Jessica was more like a mother to her than her own biological mother. At the present time, Jessica reported that Henry had been incarcerated since 2007 for driving under the influence.

Terrell was interviewed on June 15, 2011. He did not know that D.G. was in foster care and did not know that mother had been abusing the girls. As with Henry, mother reported that Terrell did not provide for his daughter. However, Terrell told the social worker that he did provide for D.G., that he last saw her less than two months prior to the inception of the dependency case, and that he was unable to see her more often because mother worked nights and made it difficult for him to see his daughter.

D.G. reported that mother had been physically abusing her since she was two or three years old. D.G. explained that mother made the girls pull down their pants. Mother would then whip the girls on their buttocks with a belt. D.G. stated that mother whipped her every time she received a bad note from school. She recalled one incident where mother "kept smackin[g] [her]" and "smackin[g] [her]" and "smackin[g] [her]" and "smackin[g] [her]." D.G. told the social worker that she did not want mother to hit her anymore. A.C. confirmed that mother would hit both girls with a belt and would also slap them in their faces. Mother would also threaten to use handcuffs on the girls to keep them from moving around when they were being beaten.

Mother was remorseful about what she had done. She told the social worker that she had been raised in foster care and had not been appropriately parented by either her mother or her foster mother. She apparently had modeled her parenting techniques based on the way that she had been raised. Thus, DCFS assessed that mother needed services to understand how to appropriately discipline her children. DCFS recommended that the juvenile court declare A.C. and D.G. dependents of the court under DCFS supervision.

Finally, DCFS noted that ICWA may apply based upon limited information provided by mother.

Jurisdiction/Disposition Hearing

At the June 23, 2011, hearing, D.G. recognized Terrell as her father. She told the juvenile court that she saw him "a lot." The juvenile court granted DCFS discretion to release D.G. into Terrell's custody.

The juvenile court found that the ICWA did not apply.

The matter was continued.

Supplemental Report and Review Hearing

On July 13, 2011, the dependency investigator (DI) disclosed that Henry was scheduled to be released that day. She reported that Henry wanted the upcoming hearing continued so that he could attend. Jessica stated that she was interested in caring for both children, if possible.

Also on that date, the DI assessed Terrell's home. She found the home to be appropriate, with no safety concerns.[3] Terrell also reported that he had family members, such as D.G.'s paternal grandmother, who were willing to assist him in caring for D.G. That said, DCFS reported that he "may" have had little involvement in D.G.'s life.

DCFS advised the juvenile court that the Los Angeles Superior Court had issued a restraining order against mother, preventing her from having any contact with A.C. or D.G.

At the July 13, 2011, hearing, mother indicated that she may have Indian ancestry. She did not know the name of the tribe, but stated that the children's maternal grandmother was raised on a reservation. The juvenile court ordered DCFS to investigate mother's claim of Indian ancestry.

The matter was continued to August 12, 2011.

Interim Review Report and Subsequent Hearing

On August 12, 2011, the DI reported that she had spoken with the maternal grandmother regarding the family's Indian ancestry. The maternal grandmother stated that the family had Cherokee ancestry, but no one in the family was a registered member of the tribe.[4]

DCFS also reported that on August 7, 2011, D.G. had been released to Terrell's custody. He had provided DCFS with documentation that he had addressed his outstanding warrant. He could not assume custody of A.C., however, because his criminal history necessitated a waiver prior to that placement.

Also on August 12, 2011, Henry filed a parental notification of Indian status, indicating that A.C. might be eligible for membership in the Yaqui tribe. He also submitted a statement regarding parentage, confirming that he was A.C.'s father, that he

---

3 Terrell's criminal background check revealed prior convictions and an outstanding warrant. Terrell reported that he had made several attempts to clear the warrant, to no avail.

4 The maternal aunt confirmed that they had Cherokee heritage.

had spent summers with her, and that he had paid child support. DCFS further reported that Henry had completed a drug treatment program while in custody and a program regarding domestic violence and conflict resolution.

At the hearing, Henry testified that A.C. spent summers in Arizona, that there was a bed for her in his home, that Jessica agreed with A.C. living with them in Arizona, and that he never had any children removed from his custody.

After hearing Henry's testimony, the juvenile court noted that as long as Henry did not pose a risk to A.C., she could be placed with him.

A.C. testified next. She stated that she had spent a significant amount of time with Henry and his family in Arizona. She said that she had a bed in the home, had never been mistreated, and that she got along with Jessica and her half-brother.

The juvenile court ordered that A.C. be detained, but it allowed her an extended visit with Henry in Arizona.

Then, Henry's counsel informed the juvenile court that he had a relationship with D.G. as well and would make sure to facilitate sibling visits. Terrell's counsel stated that he and Henry got along with one another and that they would do everything they could to keep D.G. and A.C. connected.

Regarding ICWA, the juvenile court noted that it was not a "major problem" because the children were both residing with their respective fathers.

Information for Court Officer and Subsequent Hearing

On August 15, 2011, DCFS reported that Henry and Jessica had a prior domestic violence incident in Arizona. Child Protective Services (CPS) had visited the home but did not return. Jessica reported that that was the family's only contact with CPS in Arizona and that Henry had received counseling while incarcerated.

At the hearing, mother's counsel asked that the matter be set for a contested hearing regarding disposition. He also asked that A.C. be available at the hearing. The juvenile court explained that A.C. would be available via telephone.

September 7, 2011, Interim Review Report and Hearing

In its report, DCFS indicated that mother remained incarcerated with a projected release date of January 1, 2012. A criminal protective order issued on June 1, 2011, prevented mother from having contact with her children.

Terrell reported that he felt comfortable caring for D.G.; he did not feel that he required any supportive services. D.G. informed the CSW that she was happy living with her father and wanted to remain in his custody.

Regarding Henry, he was arrested after the last hearing for disorderly conduct and resisting arrest, and he had spent a few nights in jail. At the time of his arrest, A.C. was not in any danger because she was with Jessica.[5] Henry informed the CSW that he had been charged with misdemeanor resisting arrest. Regarding A.C.'s placement, Henry indicated that A.C. had started sixth grade and he wanted his daughter to remain in his custody. A.C. told the CSW that she was doing well and enjoyed living with her father. She stated, "'yeah, it's great.'" She had made friends at school and had spoken to D.G. on the telephone several times. A.C. stated that she wanted to live with Henry, Jessica, and her half-brother.

DCFS noted that while Henry's most recent arrest was troubling, A.C. had been with her stepmother during the incident. Jessica cared for A.C. and was committed to her. And, A.C. was attached to Jessica.

Ultimately, DCFS recommended that both children remain placed with their respective fathers and that jurisdiction be terminated.

At the hearing, mother's counsel did not call any witnesses to testify and submitted the matter to the juvenile court based on the evidence in the various DCFS reports. The juvenile court sustained the counts in the petition based on the serious physical abuse perpetrated by mother, pursuant to subdivision (a) of section 300. The remaining counts were dismissed.

---

[5] Jessica did not report the incident to DCFS until after she had A.C. transported back to Arizona.

Regarding disposition, the juvenile court noted that mother had a five-year restraining order preventing her from having contact with her children. It further noted that the reason the children were in the dependency system was because of mother's actions and the children were now placed with their respective fathers. The juvenile court granted mother's counsel a two-week continuance of the dispositional hearing to address the restraining order that had been issued by the criminal court. Mother's counsel again requested that A.C. be available via telephone in order to testify if the parties could not stipulate to her testimony. A.C.'s counsel informed the juvenile court that A.C. had been on standby all day waiting to testify and, as a result, had missed school. When mother's counsel submitted, A.C.'s counsel called Henry and informed him that A.C.'s testimony would no longer be required. Mother's counsel stated: "I . . . believe we'll be able to work this out with an offer of proof at the next court date." Thus, the juvenile court concluded: "Okay. Thank you. That's it."

October 5, 2011, Interim Review Report and Hearing

On October 5, 2011, DCFS reported that it had received responses to its ICWA notices from various tribes and the Bureau of Indian Affairs, indicating that neither A.C. nor D.G. was an Indian child. The Cherokee Nation responded to the notices by advising DCFS that the information was incomplete. Specifically, in order to verify Cherokee heritage, the Cherokee Nation needed the maternal grandfather's middle name and date of birth, as well as birthdates for everyone and maiden names for all females.

At the hearing, the juvenile court found that ICWA did not apply.

Mother's counsel asked to cross-examine the children. He indicated that on September 7, 2011, he had asked that the children be available. The juvenile court explained that testimony from the children that they loved mother would not change disposition of the case. Mother's counsel made an offer of proof to the court regarding the children's testimony, stating: "Their offer of proof, I think for the child in Arizona, would be—she might be hoping for contact down the road sometime for the child in California. I think I believe the offer of proof of minors' counsel would be maybe a little more receptive to contact." He continued: "What I specifically would be requesting is

reunification for my client and would argue that it's in the best interest of the children because the mother is the only path to reunify the two children as a sibling group."

The children's counsel noted that the children were having regular telephonic contact and that Henry and Terrell were facilitating that contact for the girls. She also explained that Henry would be willing to bring A.C. to California for visits. She stated that the fathers were very supportive of maintaining that sibling relationship for the girls.

The juvenile court then asked whether there was any argument regarding returning the girls to mother's custody. Mother's counsel replied, "No, your Honor."

The juvenile court declared the children dependents of the court and found by clear and convincing evidence that their return to mother's custody would create a substantial risk of harm to their welfare. Pursuant to section 361.2, the juvenile court ordered the children placed with their respective fathers and terminated jurisdiction.[6]

Appeal

Mother's timely appeal ensued.

DISCUSSION

I. *Placement of the Children with Their Fathers*

Mother contends that the juvenile court erred in placing A.C. and D.G. with their respective fathers.

A. Applicable Law and Standard of Review

Once jurisdiction is established, section 358 requires the juvenile court to determine the appropriate disposition for the child. The juvenile court has broad discretion at the disposition hearing to decide what will best serve the child's interest and to fashion an order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) A decision of the juvenile court at disposition will not be reversed absent an abuse of discretion. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)

---

6 The juvenile court did not order that an Interstate Compact for Placement of Children (ICPC) with Arizona be pursued, reasoning that the ICPC did not apply whenever a court transferred a child to a noncustodial parent and there was no evidence that that parent was unfit.

Section 361.2, subdivision (a), provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." This statute evinces "the Legislative preference for placement with [the nonoffending noncustodial] parent." (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) In fact, "[t]he noncustodial 'parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence [of detriment to] the child. [Citations.]' [Citation.]" (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1243.)

The juvenile court must make the detriment finding by clear and convincing evidence. We review the record for substantial evidence. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1569–1570.)

B. The Children Were Properly Placed with Their Fathers Without Supervision

In light of the foregoing legal authority, the juvenile court plainly did not err in placing A.C. and D.G. with their respective fathers. The fathers were nonoffending; in fact, there was no evidence that the placement would be detrimental to the minors.

1. *Placement of D.G. with Terrell*

In urging us to reverse, mother points to Terrell's criminal history. But, DCFS assessed Terrell's home on July 12, 2011, and found it to be appropriate, with no safety concerns. And, Terrell advised DCFS that he had family members, such as D.G.'s paternal grandmother, who were willing to assist him in caring for her. Moreover, Terrell had resolved the issue of his outstanding warrant.

Mother also claims that Terrell had little involvement in D.G.'s life. In raising this argument, mother questions why Terrell did not "step in and protect" D.G. from mother's abuse. She contends that if Terrell had had enough contact with D.G., she would have informed him of the abuse. The appellate record does not support mother's assertion that

Terrell did not have sufficient contact with D.G. In its July 13, 2011, supplemental report, DCFS did not affirmatively report that Terrell had little involvement in his daughter's life; rather, the report indicated that Terrell "may" have had little involvement with D.G. Other evidence dispelled DCFS's concern. For example, at the June 23, 2011, hearing, D.G. stated that she saw her father "a lot." Regardless, at least by August 2011, Terrell reported that he felt comfortable caring for D.G., and he did not feel that he required any supportive services. And, D.G. was happy living with her father and wanted to remain in his custody.

Mother further argues that D.G. was too young to decide where she should be placed. The appellate record does not support mother's assertion that D.G. determined her placement. While D.G. informed the CSW that she was happy living with her father and wanted to remain in his custody, there is no indication that her opinion was the lone determinative factor in the juvenile court's decision.

2. *Placement of A.C. with Henry*

Likewise, there was no evidence that the placement of A.C. with Henry was detrimental to A.C. Like Terrell, Henry has a criminal history. But, Henry was committed to raising A.C. and, significantly, A.C.'s stepmother, Jessica, was committed to caring for A.C.

As with D.G., A.C. disclosed that she wanted to live with Henry, Jessica, and her half-brother. That said, there is no indication that the juvenile court based its decision solely on A.C.'s wishes.

3. *Sibling Bond Between A.C. and D.G.*

Mother challenges the juvenile court's order on the grounds that the bond between A.C. and D.G. was not sufficiently considered. We cannot agree. Over the course of this proceeding, the juvenile court heard evidence about A.C. and D.G. and how they would remain close. Both Henry and Terrell repeatedly advised the juvenile court and proved that they were committed to the girls maintaining a relationship. And, while A.C. was separated from her half-sister, she was now living with her half-brother, with whom she

visited every summer in Arizona. Finally, we cannot ignore the fact that A.C. and D.G. are not challenging the juvenile court's order on appeal.

4. *Continued Supervision and Reunification Services are not Required*

Mother argues that continued supervision of the girls was required. We are not convinced. The fathers were nonoffending; the juvenile court had no concerns regarding Henry and Terrell. (§ 361.2, subd. (b)(2).)

Likewise, the juvenile court did not err in denying mother reunification services. While the girls may have lived primarily with mother, as set forth above, they have had ongoing relationships with their fathers. Moreover, mother is not the minors' last chance at reunification. Although D.G. and A.C. may not live together, the appellate record confirms that Henry and Terrell are facilitating the girls' relationship. The fact that mother does not have a substance abuse problem does not compel reunification services. Last, as mother concedes in her opening brief, if she rehabilitates herself, she has access to the family law courts in California and Arizona to seek custody or visitation of her daughters.

II. *ICPC Properly not Invoked*

Mother contends that the juvenile court committed reversible error by failing to comply with the ICPC. "Placement with an out-of-state parent need not follow ICPC procedure." (*In re John M.*, *supra*, 141 Cal.App.4th at p. 1573; see also *In re C.B.* (2010) 188 Cal.App.4th 1024, 1036 ["an out-of-state placement with a parent is *never* subject to the ICPC"].)

III. *Mother's Due Process Rights Were not Violated*

Mother contends that the juvenile court violated her right to due process by denying her request to cross-examine the children. Mother's argument fails. Although she asked that A.C. be available for the disposition hearing, her attorney later agreed that the issue could be resolved through an offer of proof. Thus, if the juvenile court erred by not having A.C. available at the disposition hearing, it is solely the result of mother's conduct. (*In re Karla C., supra,* 186 Cal.App.4th at p. 1267 [invited error doctrine

"'prevents a party from asserting an alleged error as grounds for reversal when the party through its own conduct induced the commission of the error'"].)

Moreover, mother has not demonstrated how she was prejudiced by not cross-examining the children. (Cal. Const., art. VI, § 13; *In re Celine R.* (2003) 31 Cal.4th 45, 59–60.) She does not offer evidence or argument regarding what the children would have said had they been present at the hearing and how their testimony would have yielded a different result.

IV. *ICWA Notice was not Satisfied*

Finally, mother argues that the juvenile court's order must be reversed because the juvenile court failed to comply with the notice requirements of ICWA.

"The ICWA, enacted by Congress in 1978, is intended to 'protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.' [Citation.] 'The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.' [Citation.]

"'The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings. [Citations.] "Of course, the tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending." [Citation.] "Notice ensures the tribe will be afforded the opportunity to assert its rights under the [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." [Citation.]' [Citation.]" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173–174; see also *In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.)

The ICWA contains the following notice provision: "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." (25 U.S.C. § 1912(a).)

We agree with mother that the ICWA notice requirements were not satisfied. (25 U.S.C. § 1912(a).) The notices intended to be compliant with ICWA lack key information noted by the Cherokee Nation, including the middle name and birthdate of the maternal grandfather, and the dates of birth and maiden names of all females, including the maternal grandmother. That information presumably could have been provided upon investigation as DCFS was in communication with both the maternal grandmother and the maternal aunt.

In light of this information from the Cherokee Nation, we conclude that DCFS did not provide adequate notice, amounting to an ICWA violation. That error, however, does not compel reversal. (*In re Brooke C., supra*, 127 Cal.App.4th at pp. 384–385.) The lack of statutory notice requires a limited remand to the juvenile court for DCFS to comply with the notice requirements of ICWA. (*Id*. at p. 385.)

DCFS argues that ICWA does not apply here because the children were not removed from parental custody. We are admittedly tempted by this argument. After all, the children were ultimately placed with their fathers. But we cannot fixate on the result of these proceedings. (*In re Jennifer A.* (2002) 103 Cal.App.4th 692, 700.) DCFS initially sought foster care for the children; in fact, both girls lived with a foster family until they were placed with their fathers in August 2011. Under these circumstances, DCFS is required to comply with ICWA.[7] (*In re Jennifer A.*, *supra*, at pp. 699–701

---

[7] *In re Holly B.* (2009) 172 Cal.App.4th 1261, upon which DCFS relies, does not compel a different result. In that case, the Court of Appeal noted that ICWA applies to a "minor's placement in adoption and foster care and to other hearings, such as termination of parental rights, which affect the minor's status. They do not apply to related issues

[when DCFS initially seeks foster care, it is required to give the statutory notices, even if the minor is ultimately placed with a parent]; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 15–16 [applying the harmless error analysis in a case where DCFS did not pursue foster care or adoption, instead recommending from the beginning that the children remain with their mother].)

DISPOSITION

The juvenile court's order is affirmed. The matter is remanded for DCFS to comply with the notice requirements of ICWA.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ

---

affecting the minor such as paternity, child support or as in this case, a ruling on a petition for modification which affects only the information available to the department in making its decisions." (*Id*. at p. 1266.) Here, because the children were at risk of entering foster care, ICWA notice was required. (See Cal. Rules of Court, rule 5.480.)