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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.M., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M. et al.,

Defendants and Appellants.

B289060

(Los Angeles County  
Super. Ct. No. DK19270B)

APPEALS from an order of the Superior Court of  
Los Angeles County, Nancy Ramirez, Judge. Conditionally  
reversed and remanded with directions.

Johanna R. Shargel, under appointment by the Court of  
Appeal, for Defendant and Appellant J.V.

Suzanne Davidson, under appointment by the Court of  
Appeal, for Defendant and Appellant J.M.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Acting Assistant County Counsel, Jacklyn K. Louie, Principal  
Deputy County Counsel, for Plaintiff and Respondent.

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J.V. (mother) and J.M. (father) appeal from the juvenile court's order terminating their parental rights over their son C.M. (born July 2014). (Welf. & Inst. Code, § 366.26.)<sup>1</sup> They contend the order must be reversed because the juvenile court failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act of 1978 (ICWA). (25 U.S.C. § 1901 et seq.) We agree. We conditionally reverse the juvenile court's order terminating parental rights and remand the matter for the limited purpose of directing the court to conduct a full inquiry and provide proper notice under the ICWA.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

On September 23, 2016, the Los Angeles County of Children and Family Services (DCFS) filed a petition under section 300, subdivision (b)(1), alleging both mother and father were current substance abusers which rendered them incapable of providing regular care for C.M., then two years old. That same date, father filed an ICWA-020 form indicating his paternal grandmother was "approximately 1/4 Cherokee or Hopi." Father also stated his uncle could provide further information about his Indian ancestry. During this time, mother's whereabouts were unknown. At the detention hearing, however, father stated he believed mother had Indian ancestry. The juvenile court ordered DCFS to further investigate whether father and mother had any Indian ancestry and to contact father's uncle.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Since mother and father only raise an ICWA error on appeal, the factual summary is mainly focused on facts related to the ICWA compliance.

DCFS was unable to get in contact with mother. DCFS met with father's mother who stated father's paternal grandmother had Cherokee heritage. Father also confirmed with DCFS that his paternal grandmother had Cherokee heritage. DCFS asked father for more information about his paternal grandmother, such as her date of birth and her place of birth; however, father did not provide any other information.

On November 3, 2016, at the combined jurisdictional/disposition hearing, the juvenile court sustained the petition's allegations, declared C.M. a dependent child of the court, and found removal of C.M. from both parents was warranted. The court also ordered DCFS to provide ICWA notices to the Cherokee tribe, the Bureau of Indian Affairs (BIA), and the Secretary of the Interior.

On November 22, 2016, DCFS sent notices to the Cherokee Nation, United Keetowah Band of Cherokee Indians in Oklahoma, the Eastern Band of Cherokee Indians, the BIA and the Secretary of the Interior. As to father, the notices contained his name, his current and former addresses, his date of birth, his parents' names, his mother's current address, and the name of his paternal grandmother. The notices also identified father's tribe as Cherokee. As to mother, the notices contained her name, her former address, and her date of birth. There was no information about any of mother's relatives.

In December 2016, DCFS received letters from the Cherokee Nation and the Eastern Band of Cherokee Indians stating C.M. was not an Indian child.

On June 22, 2017, at a progress hearing, the juvenile court determined there was no reason to know that C.M. was an Indian child under the ICWA.

On September 25, 2017, at the initial section 366.26 hearing, mother made her first appearance in the dependency proceedings. That same date, she filed an ICWA-020 form indicating she may have Indian ancestry through her maternal grandfather. During the hearing, the juvenile court asked mother if she knew whether her maternal grandfather had a membership number or was eligible for membership to any tribe. Mother advised the court that her maternal grandfather was deceased and she did not know what tribe he belonged to. She also stated that her mother and other grandparents had passed away and she did not know of any family member who would be able to provide that information. Mother herself was not a member of any tribe. The juvenile court determined there was no reason to know that C.M. was an Indian child under the ICWA. The court continued the section 366.26 hearing due to other issues.

On December 13, 2017, at the continued section 366.26 hearing, the juvenile court found C.M. adoptable and terminated parental rights.

Mother and father each filed a timely notice of appeal.<sup>3</sup>

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<sup>3</sup> DCFS contends father's notice of appeal filed on February 13, 2018, is untimely. We disagree. To be timely, a written notice of appeal from a juvenile dependency order must be filed within 60 days after the order appealed from is made. (Cal. Rules of Court, rule 8.406(a).) Here, the juvenile court terminated father's parental rights on December 13, 2017. DCFS contends father's statutory time to notice an appeal from that order expired on February 11, 2018, which was 60 days from December 13, 2017. As father points out, however, February 11, 2018, was a Sunday, and the next day, Monday, February 12, 2018, was "Lincoln Day," a court holiday. (Gov. Code, § 6700,

## DISCUSSION

Mother and father contend the juvenile court erred in failing to ensure compliance with the ICWA. We agree.

Under the ICWA, if there is a reason to believe a child who is the subject of a dependency proceeding is an Indian child, the child's Indian tribe must be notified of the proceeding and its right to intervene. (25 U.S.C. § 1912(a); § 224.3.) In addition, the juvenile court and DCFS have an affirmative and continuing duty to investigate and obtain, if possible, the information necessary to give the required notices. (§ 224.3; Cal. Rules of Court, rule 5.481(a)(4)(A); *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1167–1168 (*Gabriel G.*)) Only a minimal showing is required to trigger the ICWA's inquiry and notice obligations and may be met by a mere suggestion of Indian ancestry. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 258; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1408 (*Antoinette S.*))

The required ICWA notice “must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition.” (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) Notice must also include “available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former

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subd. (a)(4).) As such, father's notice of appeal was not required to be filed until the next court day, Tuesday, February 13, 2018, and therefore is timely. (Code Civ. Proc., § 12a.)

names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.” (*Ibid.*)

“Any violation of this policy requires the appellate court to vacate the offending order and remand the matter for further proceedings consistent with ICWA requirements.” (*In re J.D.* (2010) 189 Cal.App.4th 118, 124.)

Here, both mother and father indicated they had Indian ancestry. Thus, DCFS was required to investigate and obtain, if possible, the information necessary to provide proper notice under the ICWA. (See § 224.3 [duty to inquire about possible Indian status of child]; *Gabriel G.*, *supra*, 206 Cal.App.4th at pp. 1167–1168 [same].) However, the record does not reflect DCFS ever spoke with father’s uncle to gain further information about father’s paternal grandmother, as ordered by the juvenile court. And after mother was located, there is no record of DCFS ever interviewing mother about her family’s possible Indian heritage. Although mother stated she did not know what tribe her maternal grandfather belonged to, she was never asked if she knew of any other identifying information about her maternal grandfather, such as his name and place of birth. (*Antoinette S.*, *supra*, 104 Cal.App.4th at p. 1406 “[t]hat the identity of the tribe is not known does not discharge . . . the requirement of giving [ICWA] notice”].)

Also, although DCFS sent notices to three Cherokee tribes, the Secretary of the Interior, and the BIA, the notices were deficient. As to father, the notices did not even include his place of birth. As to mother, the notices did not include her place of birth or *any* identifying information about her relatives. Further, father indicated on the ICWA-020 form that his paternal

grandmother may have been one-fourth Hopi. However, the record does not reflect that ICWA notices were sent to the Hopi tribe.

The appropriate remedy in this case is to conditionally reverse and remand the juvenile court's order terminating parental rights to C.M. Upon remand, DCFS should (1) further investigate father's claimed ancestry by, at a minimum, interviewing father's uncle about the family's possible Indian heritage, (2) further investigate mother's claimed ancestry by, at a minimum, interviewing mother about her family's possible Indian heritage, (3) notice any identified tribes, the BIA, and the Secretary of the Interior in accordance with the ICWA, and (4) submit all notices, signed return receipts, and any tribal responses received to the juvenile court. If no entity indicates C.M. is an Indian child, then the juvenile court's original section 366.26 order shall remain in effect. If the juvenile court otherwise concludes C.M. is an Indian child, then it shall proceed in compliance with the ICWA. (See *In re Michael V.* (2016) 3 Cal.App.5th 225, 236; *In re B.R.* (2009) 176 Cal.App.4th 773, 786.)

### **DISPOSITION**

The juvenile court's order terminating parental rights to C.M. is conditionally reversed. The matter is remanded to the juvenile court with directions to proceed in compliance with the inquiry and notice provisions of the ICWA. If, after proper notice is given, the juvenile court finds that C.M. is an Indian child, the court shall proceed in accordance with the ICWA. If, however, the juvenile court finds that C.M. is not an Indian child, the court shall reinstate the order terminating parental rights to C.M.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT