Filed 12/10/18 In re Cameron P. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re CAMERON P., a Person Coming Under the Juvenile Court Law.	B287933
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CAITLIN P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 17CCJP02697A)

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Juvenile Court Referee. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Caitlin P. (Mother) appeals from the jurisdictional findings and dispositional orders made by the juvenile court regarding her son, Cameron P. Mother contends the juvenile court failed to comply with the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) when it did not inquire into the potential Indian ancestry of Cameron's father, D.W. (Father), at the adjudication hearing.[1] We affirm.

PROCEDURAL BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition regarding Cameron on December 22, 2017, pursuant to Welfare and Institutions Code section 300, subdivisions (a)–(b). The petition alleged Mother inflicted serious physical harm on Cameron and failed to protect him or provide regular care for him due to her mental illness.[2]

The juvenile court detained Cameron from Mother and placed him with the maternal grandmother. Mother completed a Parental Notification of Indian Status form indicating she had no Indian ancestry and the juvenile court found at the detention hearing that it had no reason to believe Cameron was an Indian

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[1] Although Mother is not the parent with alleged Indian ancestry, she still has standing to raise the issue of ICWA compliance. (25 U.S.C. § 1914 [any parent or the Indian child's tribe may petition to invalidate a placement or termination order for failure to comply with ICWA requirements]; *In re Jonathon S.* (2005) 129 Cal.App.4th 334, 339; *In re B.R.* (2009) 176 Cal.App.4th 773, 779–780.)

[2] Because ICWA compliance is the only issue raised on appeal, we do not set forth the facts underlying the juvenile court's findings and orders that do not relate to ICWA.

child. However, the juvenile court ordered the parents to keep DCFS, their attorneys, and the court apprised of any new information relating to the child's ICWA status.

The court found D.W. to be Cameron's presumed father. However, Mother did not know Father's whereabouts, so DCFS indicated it needed to further investigate the issue. Mother reported she met Father when her family moved to Missouri while she was in high school, and she became pregnant with Cameron during that time. She stated Father last saw Cameron when he was two years old and last spoke to him several years ago. Cameron reported he had not heard from Father in three years, but wanted to speak to him.

DCFS located Father at a correctional facility in Missouri and initiated a request to interview him by telephone on January 16, 2018. On January 23, a DCFS investigator was allowed to speak to Father, who had just begun a 70-day partial day treatment program as a result of violating the terms of his parole. Father provided his background to the investigator and indicated he wanted to participate in the dependency proceedings. He told the investigator he tried unsuccessfully to get custody of Cameron in 2011. He confirmed he last saw Cameron when Cameron was three years old, and believed Mother was keeping Cameron from him. Father reported he spoke to Mother two weeks earlier, but she did not tell him about the juvenile dependency case. He asked that Cameron be placed with the paternal grandmother in Missouri.

On January 25, the juvenile court held the adjudication hearing. Father's counsel indicated he spoke to Father after sending him a letter on January 16. Father's counsel indicated he was surprised Father responded so quickly and had initially

expected to request to continue the matter. The juvenile court directed the parties to address the allegations in the petition. DCFS and Cameron's counsel requested the juvenile court sustain the petition. Mother asked the court to dismiss the petition for insufficient evidence and return Cameron to her care. Father's counsel indicated he had no position on the petition, but asked that the paternal grandmother be assessed for placement and visitation.

The juvenile court granted Father's request to assess paternal grandmother and ordered Father to comply with random drug testing upon his release from the Missouri correctional facility. The court found Cameron to be a dependent child pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b), and placed him with his maternal grandmother. A six-month judicial review hearing was scheduled for June 21, 2018. (Welf. & Inst. Code, § 366.21, subd. (e).) Mother timely appealed.

During the pendency of this appeal, the juvenile court received a report from DCFS indicating a social worker spoke with Father and the paternal grandmother regarding their potential Indian ancestry on August 7, 2018.[3] The paternal grandmother denied the family had any Indian ancestry, but Father stated he believed the family had Indian ancestry through

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[3] In support of a motion to dismiss, filed the same day as its respondent's brief, DCFS requested this court take judicial notice of the Last Minute Information for the court report filed on September 7, 2018, and the juvenile court minute order dated September 7, 2018. The request for judicial notice is granted. (Evid. Code, § 452, subd. (d); *In re Christopher I.* (2003) 106 Cal.App.4th 533, 566.) As a result of our holding, however, the motion to dismiss is denied.

his maternal grandmother, Alma K. He did not know to which tribe she belonged, but promised to gather information for the social worker.

At the September 7, 2018 review hearing, the juvenile court found the parents were in compliance with the case plan, but that continued jurisdiction was necessary. It further ordered DCFS to provide notice to the Bureau of Indian Affairs and the Department of Interior with the name of Alma K. pursuant to the requirements of ICWA.

DISCUSSION

Mother contends both the juvenile court and DCFS failed to inquire as to Father's potential Indian ancestry at the first opportunity. She also faults the juvenile court for failing to order Father to complete a Parental Notification of Indian Status form. Mother claims the juvenile court's finding that ICWA did not apply was therefore in error and asks us to remand the matter with directions to the juvenile court to order DCFS to make an appropriate ICWA inquiry; she seeks full compliance with ICWA should it become known that Cameron is an Indian child. We affirm.

I. ICWA Requirements

ICWA provides for specific notice requirements when a juvenile court knows or has reason to know that an Indian child is involved in a dependency proceeding. (25 U.S.C. § 1912(a).) "This notice requirement, which is also codified in California law (Welf. & Inst. Code, § 224.2) . . . enables a tribe to determine whether the child is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding. No foster care placement or termination of parental rights proceeding may be held until at least 10 days after the tribe

receives the required notice. (25 U.S.C. § 1912(a); see Welf. & Inst. Code, § 224.2, subd. (d).)" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 5 (*Isaiah W.*).) The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. (*In re Asia L.* (2003) 107 Cal.App.4th 498, 506.)

Federal guidelines provide "the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe." (Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. § B.5.(a), at pp. 67584, 67588 (Nov. 26, 1979)); *In re H.B.* (2008) 161 Cal.App.4th 115, 120–121.) ICWA itself does not expressly impose any duty to inquire as to Indian ancestry; nor do the controlling federal regulations. (*In re H.B.*, *supra,* at pp. 120–121; see 25 C.F.R. § 23.11(a).) However, the California Supreme Court has held that the duty of inquiry and notice in a California dependency proceeding is ongoing throughout the proceeding. (*Isaiah W., supra,* 1 Cal.5th at p. 15; see also Welf. & Inst. Code, § 224.3, subd. (a).) The court has also "emphasize[d] that social services departments and juvenile courts should inquire about a child's Indian status early in the proceedings and should provide notice at the soonest possible opportunity." (*Isaiah W., supra,* 1 Cal.5th at p. 15.)

Further, rule 5.481 of the California Rules of Court sets forth a court's duties with respect to inquiry and notice requirements under the ICWA. "At the first appearance by a parent . . . in any dependency case . . . the court must order the parent, Indian custodian, or guardian if available, to complete Parental Notification of Indian Status (form ICWA-020)."

(Cal. Rules of Court, rule 5.481(a)(2), italics omitted.) "If the parent . . . does not appear at the first hearing, or is unavailable at the initiation of a proceeding, the court must order the person or entity that has the inquiry duty under this rule to use reasonable diligence to find and inform the parent . . . that the court has ordered the parent, Indian custodian, or guardian to complete Parental Notification of Indian Status (form ICWA-020)." (Cal. Rules of Court, rule 5.481(a)(3), italics omitted.)

We review a juvenile court's ICWA findings for substantial evidence. (*In re E.W.* (2009) 170 Cal.App.4th 396, 404.) " 'On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525.) Deficiencies or errors in complying with ICWA are subject to harmless error review. (*In re H.B., supra,* 161 Cal.App.4th pp. 120–121; *In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.) The party asserting an ICWA violation thus has the burden of proving both error and "a miscarriage of justice," which is the fundamental requisite before an appellate court will reverse a juvenile court's judgment. (Cal. Const., art. VI, § 13; see *In re S.B., supra,* 130 Cal.App.4th at p. 1162.)

II. Any Delay in Inquiring About Father's Indian Ancestry Was Harmless

Here, Mother has failed to demonstrate prejudice resulting from the delayed inquiry into Cameron's Indian ancestry. The record shows Father's whereabouts were unknown when dependency proceedings were initiated. Mother indicated she had no Indian ancestry. Based on this information, the juvenile

court found ICWA did not apply, but ordered the parents to keep it, their attorneys, and DCFS updated if there was any new information. DCFS then discovered Father was in an out-of-state correctional facility. On January 16, the investigator initiated a request to speak to Father and that request was approved on January 19. The investigator spoke to Father on January 23, two days before the adjudication hearing. Although Father did not appear telephonically on the day of the adjudication hearing, he was appointed counsel to represent him.

These facts demonstrate that in a very short time frame, Father was located, notified of the dependency proceedings, and appointed counsel. Given these facts, it is understandable why an inquiry regarding Father's potential Indian ancestry was not made in the 48 hours between the time of the investigator's initial conversation with Father and the adjudication hearing.

Nonetheless, California Rules of Court, rule 5.481 requires the juvenile court to order a parent to complete the Parental Notification of Indian Status form "at the first appearance." (Cal. Rules of Court, rule 5.481 (a)(2).) That did not happen here. Father submitted to the juvenile court's jurisdiction when he indicated his willingness to participate in the proceedings. (*Brown v. Swickard* (1985) 163 Cal.App.3d 820, 826 ["First appearance for a party is when he submits to the jurisdiction of the court."].) Father was not ordered to complete the Parental Notification of Indian Status form at his first appearance at the adjudication hearing.

We find any failure to comply with rule 5.481 harmless, however DCFS subsequently asked Father and the paternal grandmother about the family's potential Indian ancestry. Father indicated his grandmother may have had Indian ancestry

and the juvenile court ordered notice be given to the Bureau of Indian Affairs and the Department of Interior about Father's grandmother, Alma K. The juvenile court met its continuing duty to inquire into Cameron's Indian ancestry and provide notice as required under ICWA.

Mother contends this notice was deficient under ICWA because it was six months late, occurring well after her opening brief on appeal was filed. However, Mother does not identify any prejudice related to this "late" notice. Indeed, *In re Louis S.* (2004) 117 Cal.App.4th 622 (*Louis S.*), upon which Mother relies, persuades us that a delay in compliance may be cured without any resulting prejudice. In *Louis S.,* the child welfare agency indicated in a six-month review hearing report that the social worker sent ICWA notices, but failed to file copies of the notices or any return receipt with the juvenile court. At the six-month review hearing, the juvenile court found ICWA did not apply. (*Id.* at p. 627.) It then terminated services for the mother at the 12-month review hearing. Mother appealed, contending reversal of the order from the 12-month hearing was required because the agency failed to comply with the guidelines issued by the Bureau of Indian Affairs regarding filing of ICWA notices and returns. (*Id.* at p. 629.)

The agency conceded the initial appellate record did not show ICWA notice requirements were satisfied. However, it contended the error was cured because the record had been augmented with copies of the notices that were subsequently sent. The court held the error would be harmless if the notices complied with ICWA, but found the notices were deficient because they contained numerous errors and omissions. Nevertheless, the court noted that those errors could have been

corrected in a timely fashion by the juvenile court if it had been raised below. (*Louis S., supra,* 117 Cal.App.4th at p. 631.)

Here, Mother does not contend the inquiry into Father's Indian ancestry or the resulting notice contained errors or omissions, she merely contends it was late. Under the reasoning in *Louis S.,* the delay here was rendered harmless by later compliance. DCFS made the necessary inquiry and the juvenile court ordered notice to the Bureau of Indian Affairs and the Department of Interior as required by ICWA.

Relying on *Louis S.,* Mother asserts DCFS has failed to establish it has fully complied with ICWA, including filing copies of the notices sent and responses received. We find this issue is not ripe for resolution. Mother appealed only from the findings and orders made at the adjudication hearing. It was only after this that the juvenile court fulfilled its continuing duties under ICWA to make an inquiry of Father and to provide notice based on that inquiry. Whether the notices sent complied with ICWA is not properly before this court. The record does not disclose whether the juvenile court made any determination as to the sufficiency of the ICWA notices. Certainly, we cannot make a determination of the sufficiency of the notices without them being a part of the record. Mother may, if she so chooses, later challenge another appealable order of the juvenile court involving the sufficiency of the ICWA notices.

DISPOSITION

The challenged findings and orders are affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J. STRATTON, J.