

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

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

2d Juv. No. B240029
(Super. Ct. No. J1379676)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

THERESA C.,

Defendant and Appellant.

Theresa C. (mother) appeals the juvenile court order terminating parental rights and selecting adoption as the permanent plan for her minor daughter N.C. (Welf. & Inst. Code,¹ § 366.26 et seq.) Mother contends that respondent Santa Barbara County Child Welfare Services (CWS) failed to comply with the notification requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm.

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

FACTS AND PROCEDURAL HISTORY

Because the facts underlying dependency jurisdiction are not relevant to the issue on appeal, we need not discuss them in detail. Mother gave birth to N.C. in August 2010.² The following December, CWS filed a dependency petition after mother was arrested on an active parole warrant and for shoplifting while the child was present.

At the detention hearing, mother stated that the minor's maternal grandfather was full-blooded Mescalero Apache. She subsequently filled out form ICWA-20 (Parental Notification of Indian Status) indicating that she might be a member or eligible for membership in the Mescalero Apache tribe. When CWS interviewed the maternal grandfather, he said he had been told by his adoptive parents that his birth parents were Mescalero Apache and that he had been "adopted off the reservation." His birth records were sealed, however, and he was unable to provide any additional information regarding his alleged Indian heritage. He was able to report, however, that he had been born on November 20, 1945, in Detroit, Michigan.

Based on this information, CWS mailed form ICWA-30 (Notice of Child Custody Proceeding) to the Mescalero Apache tribe and the Bureau of Indian Affairs (BIA). The notice included the maternal grandfather's name and the date and place of his birth. The notice also provided that "Grandfather states that he was told by his adoptive parents that they 'adopted him off the reservation' [and that] he has [no] other information." The Mescalero Apache tribe responded that the minor did not meet the tribe's requirements for membership because neither mother nor the maternal grandfather were members of the tribe. The BIA provided notice that it was deferring to the Mescalero Apache tribe's response.

The court sustained the section 300 petition and ordered that mother be given reunification services. At an interim review hearing, the court found that the ICWA did not apply. Reunification services were terminated at the six-month review

² There is no actual or presumed father. Two of three possible fathers mother identified were excluded through paternity testing. The third possible father did not take a paternity test or otherwise appear in the matter.

hearing and the court set the matter for a section 366.26 hearing. We subsequently denied mother's writ petition challenging the court's order. (*Theresa C. v. Superior Court* (Jan. 30, 2012, B23171) [nonpub. opn.])

At the section 366.26 hearing, the court terminated mother's parental rights and selected adoption as the minor's permanent plan. This appeal followed.

DISCUSSION

Mother contends the court erred in finding the ICWA did not apply because CWS failed to sufficiently investigate mother's claim that the maternal grandfather was a full-blood Mescalero Apache. She claims that CWS had a duty to seek the maternal grandfather's sealed birth records to determine whether he had been "adopted off the reservation," as his adoptive parents had purportedly claimed. She also complains that (1) CWS made no attempt to speak to the maternal grandfather's adoptive parents; and (2) the ICWA notice did not include the maternal grandfather's birth name or his current or former addresses.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. § 1901 et seq.) "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.]" (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) The juvenile court and social services agencies have a duty to inquire at the outset of the proceedings whether a child subject thereto is, or may be, an Indian child. (*Id.* at p. 470.)

The duty to provide notice under the ICWA arises when "the court knows or has reason to know that an Indian child is involved" (25 U.S.C. § 1912(a).) An "Indian child" is one who is either a "member of an Indian tribe or . . . eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (*Id.* at § 1903(4).) The notices "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. [Citation.]" (*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 one with the alleged Indian heritage. [Citation.]" (*Ibid.*; *In re C.D.* (2003) 110 Cal.App.4th 214, 224-225.) "However, neither the court nor [the social services agency] is required to conduct a comprehensive investigation into the minors' Indian status. [Citations.]" (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39 (*C.Y.*)).

We review compliance with the ICWA under the harmless error standard. (*In re E.W.* (2009) 170 Cal.App.4th 396, 402-403.) Notice is sufficient if there was substantial compliance with the applicable provisions of the ICWA. (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 566.)

The court did not err in finding that the ICWA did not apply in this case. Contrary to mother's claim, CWS was not required to seek the unsealing of the maternal grandfather's birth records. *C.Y.* is instructive. The mother in that case, who had been adopted as an infant, indicated she had lost a document stating that she had Indian heritage. The mother's adoptive father verified that her adoption records indicated some Indian ancestry, although no tribe was identified. The subsequently discovered document, which the appellate court took as additional evidence on appeal, stated that the mother's biological father was "German and a little American Indian." (*C.Y.*, *supra*, 208 Cal.App.4th at p. 38 & fn. 3.) The social services agency (DHHS) sent notice to the BIA that erroneously identified the mother's adoptive father as the maternal grandparent and gave his address and date of birth. (*Id.* at p. 39.)

In affirming the juvenile court's order that the ICWA did not apply, the Court of Appeal "[took] particular issue" with the mother's claim that DHHS had a duty to investigate her sealed adoption records to determine her tribal affiliation. The court reasoned: "Presumably, mother would have DHHS uncover, not only possible tribal affiliations, but her biological parents' and grandparents' names, birth dates and other personal information, so that information could be provided in ICWA notices. Such

actions go far beyond what is reasonable or appropriate. DHHS must inquire as to possible Indian ancestry and act on any information it received, but it has no duty to conduct an extensive independent investigation for information. [Citation.]" (*C.Y., supra*, 208 Cal.App.4th at p. 41.) The court further noted that the mother had failed to avail herself of the opportunity to obtain any information about her tribal affiliation that might be in her adoption records, as provided under the ICWA.³ (*Ibid.*)

The same rationale defeats mother's claim that CWS had a duty to investigate the maternal grandfather's sealed adoption records. Requiring CWS to seek the unsealing of those confidential records would be both unreasonable and inappropriate. Indeed, mother has not cited (nor do we know of) any legal authority that would allow such a procedure. Moreover, mother could have asked her father to pursue his statutory right to obtain any information from the records that might be relevant to her claim of Indian ancestry, but she declined to do so.

Mother's remaining claims of error also lack merit. The maternal grandfather informed CWS he did not have any additional information to support his claim that he was "adopted off the reservation" of the Mescalero Apache tribe. If his adoptive parents were still alive or otherwise capable of providing any such information, the maternal grandfather presumably would have told CWS how it could contact them. The fact that CWS did not do so thus provides no basis for us to conclude the agency failed to adequately investigate mother's claim of Indian heritage. Given the nature of the claim, failure to furnish the maternal grandfather's current and former addresses would not have assisted the Mescalero Apache tribe in determining whether the minor was either a member or eligible for membership. Mother's claim that the maternal grandfather's birth name should have been included merely begs the question whether

³ The ICWA provides in pertinent part: "Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship." (25 U.S.C., § 1917.)

CWS had a duty to investigate his sealed adoption records. As we have explained, CWS had no such duty.

Mother's reliance on *In re A.G.* (2012) 204 Cal.App.4th 1390, is unavailing. The ICWA notices in that case merely included the mother's name and birth date, the father's name, former address and birth date, and the paternal grandmother's name and address. (*Id.* at p. 1397.) The record was also devoid of any evidence that the social services agency had followed up on the father's representation that he was gathering additional information regarding his claimed tribal affiliation. Moreover, the agency conceded that the ICWA notices were insufficient. (*Ibid.*) No such circumstances are present here.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy Counsel, for Plaintiff and Respondent.