Filed 11/18/19 In re M.E. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.E. et al., Persons Coming Under the Juvenile Court Law.	B297636 (Los Angeles County Super. Ct. No. DK21473A-C)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.E. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Robin S. Kesler, Referee. Conditionally affirmed and remanded.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant M.E.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

M.E. (mother) has three children—12-year-old M.E., 3-year-old M.S., and 7-month-old M.C.—with different fathers. She appeals a judgment terminating her parental rights to all three children under Welfare and Institutions Code section 366.26.[1] Mother's sole claim on appeal is that the juvenile court and the Department failed to fully comply with the inquiry and notice requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA), related federal regulations, and state law. Respondent Los Angeles County Department of Children and Family Services (Department) contends there was no ICWA error with respect to M.E. or M.C. It further contends that any ICWA error as to M.S was either harmless or is now moot because the Department's efforts to contact paternal relatives were unsuccessful.

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[1] Statutory references are to the Welfare and Institutions Code.

Because the analysis of mother's ICWA claims differs for each child, we begin with a brief summary of the dependency proceeding, followed by an overview of ICWA and related law, before separately analyzing the facts and law relevant to each child. We affirm the termination of mother's parental rights as to mother's youngest child, M.C., and her oldest child, M.E. As to mother's middle child, M.S., we conditionally affirm, with directions to the court.

OVERVIEW OF DEPENDENCY PROCEEDING[2]

The current case stems from domestic violence between mother and Timothy C., the father of mother's youngest child, M.C. During the initial investigation in January 2017, mother reported she had no Indian ancestry in her family. Mother and Timothy submitted to dependency jurisdiction over all three children, and the court ordered visitation and reunification services for mother and Timothy. Mother was only partially compliant with her services, and services were terminated at the 12-month review hearing.

On April 5, 2019, the juvenile court ordered parental rights terminated as to all three of mother's children under section 366.26. After it had already ordered the termination

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[2] We provide a very abbreviated summary of the overall dependency case, and leave most of the specific factual and procedural information relating to the children's respective fathers' statuses and mother's ICWA contentions for later.

of parental rights at the hearing, county counsel asked the court to make a "no ICWA" finding as to M.E. and M.S. Because county counsel was new to the case, he was unable to tell the court whether the Department had reached out to any paternal relatives. Without specifying whether the court was referring to the paternal relatives of M.E. or M.S., the court stated "in an abundance of caution, I'm going to have the Department contact I think it was the paternal uncle, and any paternal relative to see if they have any Indian ancestry, and report back [on May 17, 2019]." After county counsel agreed, the court stated "If it is appealed in regards to ICWA issues, hopefully we can get that heads-up and get a running start on that." Mother and Timothy filed timely notices of appeal from the orders made at the April 5, 2019 section 366.26 hearing.

DISCUSSION

Overview of ICWA

ICWA's enactment in 1978 was Congress's response to "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.) The purpose of ICWA is

"to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." (25 U.S.C. § 1902; *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8 (*Isaiah W.*).) "In California, . . . persistent noncompliance with ICWA led the Legislature in 2006 to 'incorporate[ ] ICWA's requirements into California statutory law.' [Citations.]" (*In re Abbigail A.* (2016) 1 Cal.5th 83, 91; see also *In re Breanna S.* (2017) 8 Cal.App.5th 636, 650 (*Breanna S.)* [California law "incorporates and enhances ICWA's requirements"].)

"For purposes of ICWA, an 'Indian child' is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); see § 224.1, subd. (a) [adopting federal definitions].)" *(Breanna S.*, *supra*, 8 Cal.App.5th at p. 649, fn. 5.) Federal regulations and California law impose upon the court and the Department an affirmative and continuing duty to inquire whether a child who is the subject of a dependency proceeding is or may be an Indian child. (*In re N.G.* (2018) 27 Cal.App.5th 474, 481.) The scope of that duty is defined in regulations promulgated under ICWA (see 25 C.F.R. § 23.107 et seq. (2018)) and both the current and former versions of section 224.2 and 224.3. (Former Welf. & Inst. Code, §§ 224.2, 224.3, added by Stats.

2006, ch. 838, §§ 31, 32, pp. 6565–6569 and repealed and replaced by Stats. 2018, ch. 833, §§ 4–7, pp. 5348–5352, eff. Jan. 1, 2019.)[3] Under ICWA and California law, notice is required in state court proceedings seeking foster care placement or termination of parental rights if it is known or there is reason to know that an Indian child is involved in the proceedings. (25 U.S.C. § 1912(a); § 224.3, subd. (b); see also Cal. Rules of Court, rule 5.481(b)(1).)

Compliance with inquiry and notice requirements under ICWA and California law may be raised on appeal from any order that makes an implicit ICWA finding, based on the court's continuing duty to inquire whether a child is an Indian child. (*Isaiah W.*, *supra*, 1 Cal.5th at p. 6; *In re Michael V.* (2016) 3 Cal.App.5th 225, 234.) When one parent has possible Indian ancestry and the other does not, the non-Indian parent still has standing to raise the issue of ICWA compliance on appeal. (*In re O.C.* (2016) 5 Cal.App.5th 1173, 1180, fn. 5.)

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[3] The current dependency proceeding took place over a period when both the former and then current versions of sections 224.2 and 224.3 were in effect. All subsequent references will be to the current versions of both code sections.

ANALYSIS OF ICWA CLAIMS

Mother does not claim any Indian ancestry, so any ICWA error would only arise from the possible Indian ancestry of each child's respective father.

Mother's youngest child, M.C.

At the outset of the case, M.C.'s father, Timothy C., reported he had no Indian ancestry. The juvenile court found ICWA did not apply to M.C., and mother makes no argument that this finding was in error. The Department contends this portion of mother's appeal should be dismissed, but instead we simply affirm the order terminating mother's parental rights as to M.C.[4]

Mother's oldest child, M.E.

Mother completed a parentage questionnaire identifying Anthony E. as M.E.'s father. Mother's responses acknowledged that she was not married to Anthony at the

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[4] Timothy also appealed the juvenile court's order terminating his parental right pursuant to section 366.26, but we subsequently dismissed his appeal as abandoned pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, after Timothy's appointed counsel was unable to identify any arguable issues and Timothy did not separately present any issues to the court for consideration.

time of M.E.'s conception or birth, and he did not sign the birth certificate or provide financial assistance. At the February 7, 2017 detention hearing, the court asked mother about her last contact with Anthony. Mother said she had last seen him 4 or 5 years ago in Apple Valley, California, and she did not know any of his relatives. The court found Anthony to be M.E.'s alleged father and ordered the Department to conduct due diligence to locate him.

In its March 15, 2017 jurisdiction and disposition report, the Department reported that due diligence efforts had revealed that Anthony resided at an Opportunity Center in Palo Alto, California. The Department tried to contact Anthony by phone twice, but was unsuccessful. It sent notice of the adjudication hearing to Anthony by certified mail.

The Department reported on June 18, 2018, that staff at the Opportunity Center verified that Anthony was still residing at the center. On August 24, 2018, the social worker learned from mother that Anthony had passed away. The social worker's request for a death certificate remained pending in October 2018.

Mother does not raise a specific contention of error as to M.E. Mother's more general argument about the Department's duty to inquire about possible Indian ancestry fails because Anthony never even acknowledged paternity. The definition of a parent under ICWA expressly excludes an "unwed father where paternity has not been acknowledged or established." (25 U.S.C. § 1903(9); see also *In re Daniel*

M. (2003) 110 Cal.App.4th 703.) Mother makes no contention that Anthony acknowledged paternity, or took any action to meet the definition of a parent under ICWA. Without such evidence, the Department had no duty to conduct any inquiry under ICWA as to M.E. We find no error, and affirm the order terminating mother's parental rights as to M.E.

Mother's middle child, M.S.

Mother makes three different contentions of error under ICWA with respect to M.S. Mother contends the court erred by terminating parental rights before finding that ICWA was or was not applicable. She also contends the Department did not satisfy its duty of inquiry, because the Department did not attempt to contact paternal relatives about father's possible Indian ancestry, nor did it ask mother for paternal relatives' contact information or father's birth or death certificates. Finally, mother contends the ICWA notices sent by the Department were inadequate because they did not include adequate information about M.E.'s lineal ancestors.

We review the trial court's ICWA findings for substantial evidence. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467.) We must uphold the court's orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts

in favor of affirmance. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.)

Factual and procedural history

At the February 7, 2017 detention hearing, the possibility that M.S. was an Indian child was discussed by the court, mother's counsel, and county counsel. The court found Kevin S. was M.S.'s presumed father. Kevin was deceased, but there was a possibility ICWA applied because Mother had informed her counsel that Kevin's birth certificate indicated he was a member of the Shasta Tribe in Northern California. The court had a copy of a letter from the Bureau of Indian Affairs (BIA) concerning Kevin. The letter explained that at the time of his death, Kevin had or subsequently inherited property under the BIA's jurisdiction; it asked mother to complete a form entitled "Request for Family Information." The BIA letter is part of the record on appeal, but the family information form, either blank or completed, is not. The BIA letter did not mention a specific tribe. Mother's counsel had spoken at length with county counsel, and mother's counsel stated mother was filling out the form to send to the BIA.

County counsel stated there were two recognized Shasta tribes, one being the Quartz Valley Indian Reservation.[5] County counsel had made e-mail contact with

[5] In what may be a transcription error, the reporter's transcript reflects county counsel saying "Court Valley

the representative for ICWA inquiries, and acknowledged that the Department would probably need to send formal ICWA notice. Mother reported that paternal grandfather was the grandparent with Indian ancestry, but he was also deceased. Paternal grandmother was still alive, but did not have any information, according to mother. County counsel stated that mother could provide paternal grandmother's information to the social worker, because paternal grandmother could provide names and dates of birth for relatives. Mother's counsel stated mother was filling out the form provided by the BIA, and mother had a copy of father's death certificate if the Department wanted to obtain a copy. The court ordered the Department to provide notice under ICWA to all Shasta tribes, the BIA, and the Department of the Interior.

On March 14, 2017, a Department investigator asked mother about Native American ancestry, and mother stated that Kevin was not registered with the Shasta tribe, but paternal grandfather A.S. was registered with the tribe. There is no mention in the record that the Department ever asked for or that mother ever provided paternal grandmother's contact information or a completed copy of the family information form. There is also no evidence in the record that the Department ever asked for or obtained Kevin's birth certificate or death certificate.

Indian Reservation." The Department later sent notices to the Quartz Valley Indian Reservation and the Confederated Tribes of the Grande Ronde Community of Oregon.

On March 15, 2017, the Department sent a Notice of Child Custody Proceeding under ICWA by certified mail to the Confederated Tribes of the Grande Ronde Community of Oregon, the Quartz Valley Indian Reservation, the Sacramento Area Director of the BIA, and the Secretary of the Interior. The notice gave the names and dates of birth for M.S., mother, and Kevin, identifying mother and Kevin as M.S.'s biological parents. Under Kevin's name, the notice listed "Shasta" as the tribe or band, but did not note a location. It listed Kevin S.'s tribal membership or enrollment number as "Unknown," and stated that he died in Arizona in 2014. Under additional information with respect to Kevin, the Department wrote, "Mother provided all information known to her." The next pages of the notice provided space for the identifying information for M.S.'s grandparents and great-grandparents. The notice gave paternal grandfather's name, stated he was deceased, and listed "Shasta" as the tribe or band. In the space for tribal membership or enrollment number, it stated "Unknown (a registered member)." The remaining information for M.E.'s paternal relatives was listed as unknown, and for maternal relatives, the Department had written "Does not apply."

In a supplemental report dated April 11, 2017, the Department provided the court with a response from the Confederated Tribes of the Grand Ronde Community of Oregon reporting that the tribe had researched the family for Grand Ronde membership or membership eligibility and that there was no information available with respect to M.S.,

mother, or Kevin. The letter further reported, "The Confederated Tribes of Grand Ronde requires that applicants must have a parent who is enrolled with Confederated Tribes of Grand Ronde at the time of an applicants' birth, and who, unless deceased, is a member of the Grand Ronde Tribe at the time the applicant files an application for enrollment; must have at least 1/16th Grand Ronde Blood Quantum, and must have an ancestor on the Restoration Roll. Also, you must not be a member of any other tribe for at least [five] years." The Department also informed the court that the Quartz Valley Indian Reservation and the BIA had received the ICWA notice. At the April 11, 2017 progress hearing, the court admitted the ICWA notice and the attachments to the supplemental report into evidence, noting it had read and considered the documents. County counsel reported that no response had yet been received from the Quartz Valley Indian Reservation,[6] but that if nothing was received before the scheduled May 23, 2017 hearing, enough time would have elapsed that the court could make an ICWA finding.

On May 23, 2017, the court asked county counsel to address ICWA, and after considering the ICWA documentation provided by the Department found "at this point the court has no reason to believe that the [ICWA]

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[6] The reporter's transcript refers to the "Polk" Valley Indian Reservation. Again, we consider this to be a transcription error, in reference to the Quartz Valley Indian Reservation.

applies to either the mother or the father's side of this family." The court's ICWA finding is not reflected in the court's minute order.[7]

On June 20, 2017, the Department filed a last minute information with updates on various topics, including mother's drug testing, visitation, referrals provided to the parents, and the children's school records. The filing also repeated the ICWA information that had already been provided to the court and included copies of the return receipts from the Quartz Valley Indian Reservation and the BIA, as well as the letter from the Confederated Tribes of the Grand Ronde Community of Oregon.

In March 2018, mother stated she did not know the whereabouts of any paternal relatives who could help with placement. On October 31, 2018, the social worker learned that M.S.'s paternal uncle Kent F. was interested in providing M.S. with permanency. The Department submitted a Resource Family Assessment intake request, and Kent appeared at a status review hearing in December 2018. The Department's report under section 366.26, filed in March 2019, makes no mention of Kent as a placement possibility, instead stating that the current caregivers were interested in adopting all three children. The Department contacted Kent in March 2019, after mother's oldest daughter, M.E., disclosed that an altercation between mother and Kevin might have led to Kevin's death. Kent

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[7] Subsequent reports incorrectly state that the court had not yet made an ICWA finding.

gave information that corroborated M.E.'s disclosures. He told the social worker he would speak with paternal grandmother and the rest of his family to see if he could obtain more information about his brother's death.

Post appeal information

The juvenile court terminated parental rights at the permanency planning hearing on April 5, 2019. After mother filed the instant appeal, the dependency case continued with permanency planning for all three children. In August 2019, the Department filed a request asking this court to take judicial notice of post-appeal filings and orders from the juvenile court. We grant the Department's request, and take judicial notice of the fact that the Department reported to the court that it had not been able to make contact with Kent, despite multiple attempts in April and June 2019. On June 27, 2019, the court made findings that the Department had made multiple attempts to contact paternal relatives in regards to ICWA and it "does not have a reason to know that [M.S.] is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the BIA. Parents are to keep the Department, their Attorney and the Court aware of any new information relating to possible ICWA status."

We also grant mother's request, asking this court to receive post-judgment evidence in the form of a letter dated August 19, 2019, from the Shasta Indian Nation, stating

that M.S. "is eligible for enrollment with [the] Shasta Indian Nation." The letter states that mother has proven M.S.'s Shasta ancestry and that M.S.'s ancestor, Rose D., is listed on the 1928 California Indian Census, but that M.S.'s "enrollment isn't complete yet so she has not been assigned a roll number." As discussed later in this opinion, the evidence offered by appellant is of limited value because the Shasta Indian Nation is not a federally recognized tribe.

Analysis

1. *Dependency court's finding that ICWA did not apply*

Mother is incorrect when she argues that the court terminated her parental rights without first determining whether ICWA applied. On May 23, 2017, the court made a finding that ICWA was not applicable. The finding is reflected in the reporter's transcript for the contested hearing, but not in the minute order for that date. "Conflicts between the reporter's and clerk's transcripts are generally presumed to be clerical in nature and are resolved in favor of the reporter's transcript unless the particular circumstances dictate otherwise." (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.)

Mother and her attorney were at the hearing where the court made the ICWA determination. Mother made no objection, and there is no evidence that mother or anyone else provided any additional information that warranted

further inquiry or notice. Mother's appeal is still timely, based on the court's affirmative and continuing duty to determine ICWA applicability at each dependency hearing. (*Isaiah W.*, *supra*, 1 Cal.5th at pp. 14–15.) We reject her argument that the court never made a determination about whether ICWA was applicable and continue to the issues of whether the ICWA inquiry and notice in this case were sufficient.

2. *ICWA inquiry*

Mother contends the Department's failure to conduct a thorough inquiry into M.S.'s family history requires reversal. The Department contends that any error either was harmless or is now moot. Challenges to the adequacy of ICWA inquiries are reviewed for substantial evidence. (See *In re Aaliyah G.* (2003) 109 Cal.App.4th 939, 941–943.)

Once there is reason to believe that an Indian child is involved in a proceeding, state law describes the scope of the Department's duty to make further inquiry; and the scope includes, among other requirements, interviewing extended family members to gather the information required for an ICWA notice. (§ 224.2, subd. (e)(1).) If there is a viable lead, the Department "has the obligation to make a meaningful effort to locate and interview . . . family members to obtain whatever information they may have as to the child's possible Indian status." (*In re K.R.* (2018) 20 Cal.App.5th 701, 709 (*In re K.R.*).) Current federal regulations governing

ICWA that were adopted in December 2016 require an ICWA inquiry to be made at the inception of dependency proceedings, as well as at subsequent proceedings, including termination of parental rights. (25 C.F.R. §§ 23.2, 23.107, 23.143 (2019); *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 784–785.) This is a significant change from prior federal law, which did not impose an express duty to inquire into a child's possible Indian ancestry. (See, e.g., *In re H.B.* (2008) 161 Cal.App.4th 115, 120 [ICWA itself does not expressly impose any duty to inquire as to American Indian ancestry; nor do the controlling federal regulations].)

The record evidence establishes that the Department at least initially took steps to fulfill its duty to fully investigate mother's claim that M.S. had possible Indian ancestry. At the detention hearing on February 7, 2017, the Department had already identified two federally-recognized tribes that were considered Shasta tribes, and was already in contact with the ICWA representative for one of the tribes. Shortly thereafter, on March 14, 2017, the Department obtained information from mother about father and paternal grandfather's enrollment status. The Department's report stated "On 3/14/17, [the investigator] inquired about the family's Native American Ancestry. Mother stated that she does not have any Native American Ancestry, however, child [M.S.] does have Native American Ancestry through paternal family. Mother stated that deceased father Kevin . . . was not registered with the Shasta Tribe. However, paternal grandfather, [A.S.] is

registered with the Shasta Tribe." The Department sent out ICWA notices the following day. The notices gave paternal grandfather's name and identified him as a registered member of the Shasta tribe, but listed his place and date of birth and death as unknown.

Mother highlights the fact that the Department never obtained father's birth or death records, despite knowing mother had those records. However, mother does not offer any explanation or argument that the contents of those documents would aid the Department in an inquiry. The only aspects of the Department's investigation that cause concern are its failure to obtain paternal grandmother's contact information from mother and to contact paternal grandmother or any other paternal relatives. If the Department did take one or more of these steps, its efforts are not documented in the record on appeal.

The Department argues that any error is harmless because mother has acknowledged that paternal grandmother was not the source of M.S.'s Indian ancestry. This argument must be rejected because it ignores the Department's obligation under ICWA and state law to conduct its own inquiry, and to seek the information necessary for a complete ICWA notice. Even if paternal grandmother is not the source of Indian ancestry, she is a viable source of information about paternal grandfather and his relatives, and their Indian ancestry. There is no evidence in the record that the Department even asked mother for paternal grandmother's name or contact

information. Nor is there any documentation of any inquiry into whether other paternal family members might have additional information about M.S.'s potential Indian status. Paternal uncle appears later in the proceedings, but there is no indication in the record about how or when the Department learned of his existence, nor any evidence the Department asked him about possible Indian ancestry.

We recognize the Department is not required to document every detail of its investigation. (See, e.g., *In re Gerardo A.* (2004) 119 Cal.App.4th 988, 995 [a silent record does not mean the department failed to make an adequate ICWA inquiry]; see also *In re Charlotte V.* (2016) 6 Cal.App.5th 51, 58.) Nor is the Department required to exhaust every conceivable avenue, no matter how time consuming or likely to be fruitful. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199 [the Department has no duty to "cast about" for information].) However, the Department is obliged to "make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*In re K.R.*, *supra*, 20 Cal.App.5th at p. 709; see also *In re I.W.* (2009) 180 Cal.App.4th 1517, 1531 [although not all deficiencies in notice are prejudicial error, "strict compliance" with ICWA notice requirements is important].) It "cannot omit from its reports any discussion of its efforts to locate and interview family members who might have pertinent information and then claim that the sufficiency of

its efforts cannot be challenged on appeal because the record is silent." (*In re K.R.*, *supra*, at p. 709.)

Without some evidence of efforts beyond merely speaking to mother, we cannot find that the Department's efforts were sufficient. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 652 [duty of inquiry not satisfied even though the Department interviewed child's mother and grandmother, because neither were asked any questions about maternal grandfather and no efforts were made to locate him]; *Michael V., supra*, Cal.App.5th at pp. 234–235 [the Department's interview of the mother and review of its own records did not satisfy duty of inquiry where the mother stated her mother might have more information and was possibly living in San Diego, which gave the Department "at least a starting place for its inquiry"]; *In re K.R., supra,* 20 Cal.App.5th at p. 708 [duty of inquiry not satisfied where record contained no evidence agency attempted to contact other known family members]; *In re N.G.*, *supra*, 27 Cal.App.5th at p. 482 [duty of inquiry not satisfied where record did not indicate whether agency asked relatives who were in contact about possible Indian ancestry, asked paternal relatives for information about lineal ancestors, or attempted to contact other relatives].)

At the very least, the Department had a duty here ask mother for paternal grandmother's contact information, to inquire about other relatives who might have pertinent information, and to attempt to interview paternal grandmother and other paternal relatives regarding ICWA

issues. There is also no evidence in the record that the Department ever asked mother for a completed copy of the family information form that the BIA had sent to mother and that mother's counsel stated she was filling out at the detention hearing. Because the record does not include any evidence of such efforts by the Department, we conclude its investigation was insufficient.

Also, because the record is silent about whether the Department asked mother whether M.S. had any other paternal relatives, we are unconvinced by the Department's argument that the question of adequate inquiry is moot because paternal uncle had not returned the social worker's phone calls. The reports describing the social worker's efforts simply state that the social worker asked paternal uncle to call back, but did not specify the purpose of the call. We also have no information about why the Department would not have asked paternal uncle about paternal grandfather's registration in the Shasta Tribe, and seek any information paternal uncle might have had about M.S.'s lineal ancestors.

3. *ICWA notice*

Mother argues that there was not substantial evidence to support a finding that the ICWA notice sent on March 15, 2017, was adequate. In light of our earlier analysis that the Department's inquiry efforts were inadequate, we find it reasonably probable that further investigation would reveal

identifying information about paternal grandmother and other paternal relatives that should have been included in the ICWA notices.

By 2017, the federal ICWA regulations provided in relevant part that a notice to the tribe must include "[i]f known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents." (25 C.F.R. § 23.111(d)(3); see also *In re E.H.* (2018) 26 Cal.App.5th 1058, 1069.) The juvenile court cannot "assume that because *some* information was obtained and relayed to the relevant tribes, the social services agency necessarily complied fully with its obligations. On the contrary, once there is sufficient information to believe that the children might be Indian children within the meaning of ICWA and the California statutes, 'responsibility for compliance' with those statutes 'falls squarely and affirmatively' on *both* the social services agency and the court. [Citation.] Accordingly, the court has a responsibility to ascertain that the agency has conducted an adequate investigation and cannot simply sign off on the notices as legally adequate without doing so." (*In re K.R.*, *supra*, 20 Cal.App.5th at p. 709.)

Here, because we have already determined that the Department's investigation was inadequate, the court lacked sufficient evidence to find the March 15, 2017 notice adequate.

We reject, however, an argument raised in mother's reply brief, that notice was inadequate because it was not

sent to the Shasta Tribe. Mother faults the Department for only sending ICWA notices to the Confederate Tribes of Grande Ronde and the Quartz Valley Indian Reservation. She argues that despite her claim that M.S.'s Indian ancestry was through the Shasta tribe in Northern California, the Department neglected to send an ICWA notice to the Shasta Indian Nation in Redding, California. An Indian tribe is defined as "any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians." The Bureau of Indian Affairs publishes an annual list of federally recognized Indian tribes, and the Shasta Indian Tribe is not on that list. (See 84 Fed.Reg. 1200–1205 (Feb. 1, 2019).) Because the Shasta Indian Tribe does not meet the definition of an Indian tribe under ICWA, the Department had no obligation to send an ICWA notice to the tribe.

4. *Conclusion as to M.S.*

Even though we conclude the Department has not complied with its duty to investigate under ICWA, the remedy is not to reverse the order terminating parental rights, because "there is not yet a sufficient showing that the child is, in fact, an Indian child within the meaning of ICWA." (*In re Hunter W., supra,* 200 Cal.App.4th at p. 1467.) Instead, the remedy is to "remand with instructions to ensure compliance with ICWA." (*Ibid.*)

Because there is insufficient evidence to suggest the Department and the court satisfied the duty of inquiry under ICWA as to M.S. at the section 366.26 hearing or the continuing duty of inquiry under California law at any point in these proceedings, we remand the matter for the juvenile court and the Department to correct that error and, if there is a suggestion M.S. is an Indian child, to proceed with all further action that ICWA and California law require. If the inquiry results in additional information needed for the ICWA notice, the updated notice must—at a minimum—be provided to the two tribes already noticed, as well as the BIA. The court shall then determine whether ICWA inquiry and notice requirements have been satisfied and whether M.S. is an Indian child. If the court finds M.S. is an Indian child, the court shall conduct a new section 366.26 hearing, as well as all further proceedings, in compliance with ICWA and California law. If not, the court's original section 366.26 order remains in effect. (*Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 788.)

In directing the Department to take all appropriate steps to ensure ICWA compliance, the court may require the Department to do some or all of the following, as warranted by the circumstances: (1) contact mother to ask her for paternal grandmother's contact information, (2) conduct its own search for possible paternal relatives, (3) file a report documenting its efforts and any results. Depending on whether the results of the Department's inquiry reveals identifying information for any paternal relatives whose

information should be included in an ICWA notice, the court will need to direct the Department to send updated notices to the tribes previously notified, as well as the BIA and the Secretary of the Interior. If the court is satisfied that the Department has made reasonable efforts and has been unable to obtain relevant information about any paternal relatives, then it may restate its initial determination that ICWA does not apply to M.S.

DISPOSITION

The court's findings and orders terminating parental rights are conditionally affirmed, with directions to the juvenile court to direct further inquiry into the possibility that M.S. is an Indian child, and updated notices as necessary.

MOOR, J.

We concur:

RUBIN, P. J.

BAKER, J.