Filed 1/23/13 In re I.M. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re I. M., a Person Coming Under the Juvenile Court Law.	B238483 (Los Angeles County Super. Ct. No. CK89007)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T. J., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed and remanded with directions.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellant T. J. (mother) appeals from juvenile court orders sustaining a Welfare and Institutions Code section 300[1] petition as well as a subsequent section 342 petition on behalf of her daughter, I. M. (I., born Oct. 1995). She contends that there is no evidence to support the allegations in either petition. She further argues that even if dependency jurisdiction could be found, there was insufficient evidence to warrant removal of I. from mother's custody; alternative remedies were available. Finally, mother asserts that the juvenile court erred when it failed to ensure compliance with the notice requirements of the Indian Child Welfare Act (ICWA).

To the extent mother attacks the juvenile court's adjudication and disposition orders, we conclude that the juvenile court did not err. Substantial evidence supports the juvenile court's orders. However, as the Department of Children and Family Services (DCFS) concedes, we agree that ICWA 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.

FACTUAL AND PROCEDURAL BACKGROUND

Nondetained Section 300 Petition

This family consists of mother, I., and I.'s half-brother D. T. (D., born Oct. 2001). Ignacio M. (Ignacio) is I.'s father; he was incarcerated at the time of the events leading to the section 300 petition and is not a party to this appeal.

On June 22, 2011, DCFS received a referral alleging that mother had physically abused I. The caller reported that according to I., mother and I. had had an argument, which resulted in mother hitting I. on the body and head. The caller stated that I. was "incorrigible," four months pregnant with twins, and had recently moved from Riverside into mother's home. I. apparently wanted to return to Riverside against mother's wishes.

---

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

The caller further stated that, according to mother, I. had gotten a kitchen knife during the argument, but mother took it from her and pushed I. against the wall.

The social worker interviewed mother. According to mother, I. was a "disrespectful teenager." Mother admitted that they were "battling" because I. wanted to return to her maternal great-grandmother in Riverside. Mother believed that the maternal great-grandmother was too old to properly supervise I. Mother also complained that I. was upset because mother would not allow her to have contact with I.'s boyfriend. Mother claimed that I. got a knife from the kitchen drawer and "came at her so she had no choice but to restrain her." Mother denied that she hit, kicked, or choked I. She signed a safety plan, which stated that I. would stay with her maternal aunt until a team decision making (TDM) meeting was conducted. Mother would not have contact with I. until then.

Mother submitted to a criminal background check, which revealed an extensive criminal history, including arrests for grand theft auto, burglary, driving with a suspended license and false proof, hit and run, battery on a person, making/passing a fictitious check, possession of marijuana, false impersonation of another, carrying a loaded firearm, and violation of parole. On July 4, 2008, mother had been arrested for burglary and sentenced to three years in prison.

Next, the social worker interviewed I. She stated that she had been arguing with mother since she moved into the home in May 2011. On June 22, 2011, she tried to walk out of the home to go to her cousin's house down the street, but mother pulled her by the arm to get her back inside the house. Mother then hit her head, arms, and side with mother's fist, and choked and kicked her in the head and in her side. I. pushed the computer chair at mother to keep her away, but mother pushed the chair back. I. then went to the kitchen and retrieved a knife, but mother grabbed it from her and put it to I.'s neck. Mother then pushed I. onto the couch and I. called the police. I. told the social worker that her head and neck hurt where mother had grabbed her. I. refused to go home as she did not feel safe staying with mother. She indicated that she and mother got into frequent physical altercations and did not want to live with mother.

The social worker then spoke with D. He informed her that mother and I. were "cussing," "hitting," and "grappling" at each other. He saw mother hit I. on the stomach and face, and I. tried to choke mother. D. stated that mother and I. got into a "physical fight" once every few months and mother would hit I. with a closed fist. D. reported that he got along well with mother.

That same day, I. was taken to Centinela Hospital where she received an ultrasound. No injuries were reported.

A TDM meeting was held on July 6, 2011. The family agreed on the safety plan in which DCFS recommended that I. return to mother's home and the family be provided with voluntary family maintenance (VFM). DCFS also recommended that mother and I. participate in parenting and anger management classes. Mother and I. also agreed to participate in individual and family counseling. Extended family members agreed to provide support and assistance to mother and I. Mother agreed not to physically discipline the children.

On July 7, 2011, the social worker attempted to call mother to take the children's photographs. Mother failed to return the telephone call. Later, mother refused to allow a DCFS human services aide access to the children to have their photographs taken.

On July 18, 2011, mother informed the social worker that I. had run away on July 15, 2011. Mother said that she did not have a current photograph of I. She refused to provide any further information to the social worker.

The social worker obtained I.'s school reports. Those reports indicated that I. had "academic difficulties" and that the school was concerned about her "frequent tardies and truancies."

By this point, DCFS opined that mother was being uncooperative and claimed not to understand why DCFS was involved in her life. Thus, DCFS recommended court intervention. It also requested that a protective custody warrant be issued for I. and that I. be detained.

Based on the foregoing, on July 21, 2011, DCFS filed a nondetained section 300 petition on behalf of I. pursuant to subdivisions (a), (b), and (g) and on behalf of D.,

pursuant to subdivisions (a), (b), and (j). The petition alleged that mother physically abused I. on or about June 22, 2011, by striking her with her fists while I. was four months pregnant. The petition further alleged that mother had physically abused I. on prior occasions by striking her head and arms, brandishing a knife at her and placing the knife to her neck, choking her, and kicking her head. At the time, I. was "at large."

A completed Indian Child Inquiry form dated July 11, 2011, indicated that I. had no Indian ancestry. Thus, DCFS reported that the ICWA did not apply.

At the hearing on July 28, 2011, the juvenile court found a prima facie case to detain I. from mother and place her in shelter care pending court order as I. was at large. The juvenile court issued a protective custody warrant; she was to be transported to the juvenile court as soon as she was located.

Protective Custody Warrant

On September 1, 2011, DCFS reported that the Riverside police department had found I. on August 24, 2011. She had attempted to enroll herself in school in Riverside County. The school contacted mother, who notified the school that I. had run away from home and that a protective custody warrant had been issued for her. The Riverside police department contacted DCFS.

Jurisdiction/Disposition Report (September 6, 2011)

DCFS indicated that I. had been placed in foster care on August 24, 2011. It further stated that the ICWA did not apply.

The dependency investigator reported that she had interviewed I. on August 26, 2011. According to I., her argument with mother on June 22, 2011, was a "'usual thing.'" Mother had pushed her and put her hands on I.'s shoulder/chest area. I. fell on the couch; when she got up, she pushed mother. Mother then punched her arm, scratched her face, and grabbed her hair. I. told the investigator that mother knew she was pregnant at that time. I. then took out the knife from the kitchen drawer, but mother ran up and took the knife from her. Mother then put the knife up to I.'s neck and told I. to kill herself. Mother then "'choked'" I. with her hands. Mother's assault lasted "'for a while.'"

I. further disclosed that mother kicked her head about two or three times; her face was "'stinging,'" and the side of her body hurt.

I. called 911 and the police and an ambulance went to the home. I. was taken to the doctor and an ultrasound was conducted. Her babies were "'okay.'"

Finally, I. revealed that she and mother had four to five prior "'physical fights'" when they lived in Riverside.

The social worker attempted to contact mother, but she was hostile and refused to cooperate. She refused to be interviewed, refused to allow D. to be interviewed, and claimed not to know why DCFS was involved in her family. However, on August 25, 2011, the dependency investigator had a brief conversation with mother by telephone. According to mother, I. was "'just making stuff up.'" Mother refused to participate any further that day with the interview. Although she agreed to be interviewed on August 26, 2011, mother cancelled the appointment. The appointment was rescheduled for August 31, 2011, but mother cancelled that interview as well. Then mother informed DCFS that she would not participate in the VFM and she did not want DCFS involved with her family.

DCFS conducted a social study/family assessment. The assessment revealed that mother disapproved of I.'s then-19-year-old boyfriend, Junior P. (Junior), who was the father of her twins. The assessment further revealed that mother had filed a police report against him for statutory rape. I. reported to DCFS that mother failed to ensure that she have prenatal care and refused to allow I. to take "prenatal medication" during the first four months of her pregnancy.

DCFS also reported that I. denied that she ran away from home. Rather, she said that mother knew that she was living with Junior in Riverside because she told her that that was where she was staying in July 2011. I. told the social worker that she felt "'depressed'" in mother's care.

The social worker opined that I. could not remain safely in mother's home due to their volatile relationship. According to I., the arguments between her and mother

usually ended in violence. During the most recent incident, the argument resulted in mother's use of a knife, which placed I. and her unborn twins at risk for serious harm.

Despite DCFS advising mother of the importance of cooperating with the VFM, mother refused to cooperate. DCFS made several attempts to arrange an in-person interview with mother, but she cancelled all the appointments and refused to allow the social worker access to the home.

DCFS recommended that the juvenile court sustain counts a-1, b-1, and j-1 of the section 300 petition. It further recommended that mother be offered family maintenance services/family reunification services, including parenting and anger management classes as well as individual counseling to address issues surrounding anger. It also recommended conjoint counseling for mother and I.

Mother signed a parental notification of Indian status, indicating that she had no Indian ancestry.

Pretrial Resolution Conference (PRC)

At the pretrial resolution conference, I. remained detained. DCFS was granted discretion to release I. back to mother. The PRC was continued.

Interim Review Report and Continued PRC (September 21, 2011)

DCFS reported that I. had been placed with her maternal grandmother. It also reported that the ICWA did not apply.

On September 8, 2011, I. told the DCFS social worker that she felt safe with mother and wanted to live with her. Mother also told the social worker that she wanted I. to return to her care. She did not understand why D. could be in her care but I. could not.

The maternal grandmother stated that she could only care for I. for two weeks due to the restrictions of her community living facility.

At the continued PRC, mother advised the juvenile court that both D. and I. were residing with mother. At mother's request, and with I.'s joinder, DCFS was directed to address a possible section 301 contract for informal supervision. The PRC was continued for adjudication.

Interim Review Report (October 17, 2011)

DCFS reported that I. continued to live with mother. Although the social worker attempted to contact I. at least twice, he could not reach her because mother refused to give him I.'s whereabouts. After the social worker left repeated telephone messages to mother regarding the scheduled pregnancy and parenting teen conference (Conference) that was set for October 11, 2011, mother finally returned the calls, saying, "'I got y'alls message so you can stop calling my phone.'"

The social worker also contacted the maternal grandmother. According to her, I. was at Little Company of Mary Hospital, where she gave birth to twins, Arianna and Mariah P., in October 2011.

On October 11, 2011, the social worker met with mother for the Conference. She confirmed that I. had given birth to twins, but she refused to disclose the twins' date of birth or the location of the hospital where they were admitted. She told the social worker that I. was in the hospital and did "'not need to be bothered by y'all.'"

Based on mother's lack of cooperation, DCFS concluded that she was "'not . . . appropriate'" for a section 301 contract. After all, mother had been told at the TDM that cooperation with DCFS was one of the most important aspects of the VFM plan, and she needed to cooperate fully before a section 301 contract could be considered. Despite mother telling the social worker that she understood it meant giving DCFS access to I. at reasonable times during the day for face-to-face contact and promising to cooperate, mother subsequently refused to cooperate. She also refused to stay for the Conference. Thus, DCFS recommended that I. be declared a dependent and that mother be granted family reunification services, including anger management, parenting, individual counseling, and conjoint counseling with I.

Interim Review Report (December 14, 2011)

DCFS reported that I. now lived with the maternal grandmother. Again DCFS reported that the ICWA did not apply.

The social worker met with I. on November 30, 2011. According to I., she and mother had been doing well since October 17, 2011. She told the social worker that she

had given birth to twin girls, who were born prematurely and were going to be hospitalized in the neonatal intensive care unit for approximately 12 weeks.

The social worker also met with mother. Mother believed that she no longer needed DCFS supervision. She claimed that she had learned to be patient and calm with I. She also claimed that she and I. were able to "'talk out their issues and not engage in a physical outburst'" during times when I. was "'disrespectful and disobedient.'" The social worker indicated that mother, I., and the twins had moved in with the maternal grandmother, but mother failed to inform the social worker of their new address.

The social worker met with mother again on November 30, 2011. DCFS reiterated that mother had not fully cooperated in allowing the social worker to come to the home to access I. Moreover, mother had still not enrolled in any case programs.

Adjudication and Disposition of the Section 300 Petition; Mother's Appeal

At the combined contested adjudication/disposition hearing on December 14, 2011, the juvenile court sustained counts a-1 and b-1 of the section 300 petition.[2] It found I. to be a dependent of the court, noting: "Hopefully, mom will come around and cooperate and assure the Department and the court that it's unnecessary for the Department to be involved. But that will only happen when she—she begins to cooperate." In that regard, the juvenile court commented that mother's completion of anger management programs was necessary.

Mother was ordered to participate in a DCFS-approved program for parent education focused on teens and difficult children, conjoint counseling for mother and I., individual counseling with a licensed therapist to address anger management and adult-parent responsibilities for mother, and individual counseling for I. to address case issues. I. was released to mother under DCFS supervision.

Mother timely filed a notice of appeal from the juvenile court's findings and orders.

Detention Report (January 11, 2012)

DCFS attempted to contact mother throughout December 2011 to request a time to visit I. in the home. Mother was not cooperative. On December 23, 2011, DCFS finally reached mother by telephone. During the telephone call, mother complained that the

---

[2] "On or about 6/22/11 and on numerous prior occasions, . . . mother . . . physically abused . . . I. by striking the child's stomach with the mother's fists, while the child was four months pregnant. The mother struck the child's head and arms with the mother's fists. The mother brandished a knife at the child and placed the knife to the child's neck. The mother choked the child and kicked the child's head. The mother pushed the child onto the couch. The mother pulled the child's arm. The child sustained pain and discomfort to the child's head, neck and stomach. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child does not want to reside in the mother's home and care, due to the ongoing physical abuse of the child by the mother. Such physical abuse of the child by the mother endangers the child's physical health, safety and well-being, creates a detrimental home environment and places the child I. and the child's sibling, D. at risk of physical harm, damage, danger and physical abuse."

social worker was "insensitive" for trying to do a home visit the week of Christmas; thus, she refused to cooperate. During the entire telephone conversation, mother was extremely upset, annoyed, and offended by DCFS's actions as she characterized them as "rude" regarding her "right to spend quality time" with her family. DCFS advised mother that she must allow the social worker to have monthly contact with I. and that mother's failure to do so would constitute a violation of the juvenile court's order.

On December 23, 2011, an immediate response was received by the Riverside County Child Protective Services (CPS) social worker regarding one of I.'s babies, Arianna. According to a CT scan, Arianna had blood in the brain and needed to be incubated.

On December 28, 2011, the social worker met with mother and I. According to mother, I. asked her if she could visit Junior in Riverside. Mother stated that she permitted I. and the twins to stay with Junior on or about December 21, 2011. According to I., she left the twins with Junior in the barn while she went to the main house to get a snack. When she returned to the barn, she noticed that Arianna's eyes were rolled back, her right eye was swollen, her right cheek was red, and her lip was scratched. Mother told the social worker that she was informed of the extent of Arianna's injuries once the baby was transported to the hospital.

That same date, I.'s other daughter, Mariah, was placed in foster care; Arianna remained hospitalized; and Junior was arrested. The CPS social worker told DCFS that on January 4, 2012, Junior admitted that he shook and dropped Arianna approximately 20 times.

On January 6, 2012, DCFS conducted a case conference. DCFS concluded that mother had inappropriately supervised I., including by allowing her to spend an extended period of overnight visits with Junior. Thus, a warrant request was submitted and granted.

DCFS reported that mother had not complied by participating in any court-ordered services. Although mother claimed that she had a start date of January 10, 2012, to begin parenting and counseling classes, she had not yet provided documentation to support her

claim. DCFS indicated that mother's resistance and inaction to participate in court-ordered programs endangered I. and placed her at risk of harm.

On January 8, 2012, I. was removed from mother's care and placed in foster care.

Section 342 Petition and Detention Hearing

On January 11, 2012, DCFS filed a section 342 petition on behalf of I., alleging that on or about December 20, 2011, mother placed I. in a detrimental and endangering situation in that she allowed her to spend several days and nights with her 21-year-old male companion, Junior, who shook and dropped I.'s then-two-month-old daughter and inflected a subdural hematoma resulting in multiple seizures, retinal hemorrhaging, bruising to her left eye, swelling to her eyes, and scratches to her face.

At the detention hearing, mother denied the allegations against her. The juvenile court found a prima facie case for detaining I. and ordered temporary placement and care with DCFS.

Last Minute Information for the Court (January 18, 2012)

DCFS reported that the social worker attempted to contact mother on January 11 and 12, 2012, to obtain contact information for the maternal grandfather regarding possible placement of I. Mother failed to respond to the social worker's telephone calls.

Jurisdiction/Disposition Report (February 14, 2012)

DCFS reported that I. remained placed in foster care and the ICWA did not apply.

The social worker interviewed I. She said that after the twins were born, they went to Riverside for about a week and a half and stayed with Junior for about three days. I. told the investigator that they stayed with Junior in the barn during the day to watch television and play video games. I. also indicated that mother did not like the social workers in people's business, "'invading [their] privacy,'" and would not allow the social worker in the home.

The investigator spoke with mother by telephone. She claimed that she was advised by her attorney not to discuss or participate in an interview. However, mother then made voluntary and spontaneous statements. For example, mother claimed, "'For them to say that I could have protected them . . . no one suspected anything like this was

going to happen. . . . I know it is a bad thing. The whole thing started with [Junior]. . . . I always had an issue with him. To say I'm [irresponsible] I don't agree with that, and now you put her in Riverside. . . . They say that I'm not cooperative how can they say that? He doesn't have a car so he couldn't come to Los Angeles to visit the twins. It was just always excuses it took a lot of time before I let her go and they kept asking. . . . He hadn't seen the babies in about a month. I wanted them to have a dad. . . . I felt he attended to them well. . . . I could not understand what drove him to this. He seemed like a jealous person.'"

Next the investigator interviewed Junior in jail. He admitted to shaking Arianna about 15 times. I.'s family did not come inside his house. I. stayed with him two or three times and stayed for about a week. Junior stated that mother or I.'s grandfather would sometimes drop I. off at his place, but they never came inside to look around. He further stated that he, I., and the twins slept in the barn where the twins slept in their carseats that were placed on top of the bed. Junior stated that there were animals outside the barn, about 10 feet away. He admitted to using marijuana and to having smoked it with the maternal great-grandmother. He also told the investigator that he had witnessed a fight between mother and I. where mother grabbed her. According to Junior, I. admitted to him that the physical abuse happened everyday because mother was jealous and did not want I. going out with friends or him.

The investigator then interviewed the maternal grandfather. He advised that he had "'drop[ped] off'" I. at Junior's place only once, but he did not get out of the car to check where I. and the twins would be staying because he assumed that mother "'had already done that.'"

DCFS reported that Junior lived in a barn that had no heater or running water. According to the Riverside police detective who had investigated the incident with Arianna, there were several dogs that were "very dirty" on the property near the barn; there was dog feces all over the property and inside the room where Junior, the twins, and I. lived; there were two dirty and soiled blankets on the mattress that was on the floor;

and the room smelled "'very bad,'" possibly from cigarette smoke and persons not using proper hygiene. DCFS confirmed that Junior had been arrested on December 23, 2011.

On January 19, 2012, the social worker contacted the counseling center where mother claimed she had enrolled in classes. According to a representative from the center, mother had not attended counseling sessions for anger management since December 2011, and the counselors at that center were not licensed therapists.

One week later, the social worker attempted to schedule an interview with mother. Mother ended the telephone call by stating, "'You are getting on my nerves.'"

DCFS assessed that I. could not remain safely in mother's care because mother had failed to provide a safe and stable environment for her. Mother permitted I. to spend several nights with Junior without first assessing his home, and it was during the time when mother became "evasive" with the social worker regarding I.'s whereabouts. DCFS further reported that mother did not consult with the social worker as to whether it would be appropriate to allow I. to stay with Junior, and she refused to accept responsibility for allowing I. to reside with him where, according to the police report, they continued to engage in unlawful sexual intercourse. DCFS recommended family reunification services for mother, including parent education classes, individual counseling to address anger management and parent responsibility, and conjoint counseling with I.

Adjudication/Disposition of the Section 342 Petition

The juvenile court adjudicated the section 342 petition on March 14, 2012. After receiving various DCFS reports into evidence and entertaining oral argument, the juvenile court sustained count b-1 of the section 342 petition.[3] The matter then proceeded to disposition.

---

[3] "On or about 12/20/2011, [mother] placed [I.] in a detrimental and endangering situation in that the mother allowed [I.] to spend several days and nights with the child's 21 year old male companion, Junior . . . , who shook and dropped the child's then two month old daughter, Arianna . . . , inflicting a subdural hematoma, retinal hemorrhaging, multiple seizures, bruising to the daughter's left eye, swelling to the daughter's eyes, and

The juvenile court declared I. to be a dependent of the court under section 342 and made orders removing her from mother's physical custody. Reunification services were ordered, including conjoint counseling, parenting classes to address teens and difficult children, individual counseling to address anger management and adult parent responsibilities. The juvenile court also ordered monitored visits for mother with DCFS discretion to liberalize.

Regarding the ICWA, the juvenile court indicated that it had not previously made an ICWA finding. Despite the representation in her prior signed parental notification of Indian status dated September 6, 2011, mother now informed the court that she may have Choctaw ancestry, possibly on her mother's side. Mother's counsel stated that the Indian ancestry would be the maternal great-grandfather named "John." Mother did not know his last name, but mother's grandmother might know the information. The juvenile court ordered DCFS to interview mother regarding possible Indian heritage.

Mother's Appeal

Mother's timely appeal from the juvenile court's March 14, 2012, findings and orders ensued.

---

scratches to the daughter's face. Such a detrimental and endangering situation created for the child by the mother, and the mother's inappropriate plan for the child's care and supervision, endangers the child's physical health, safety and well being, creates a detrimental home environment and places the child at risk of physical harm, damage and danger."

DISCUSSION

I. *Substantial evidence supports the juvenile court's finding that I. was a person described by section 300, subdivisions (a) and (b)*

A. Standard of Review

As the parties agree, we review the juvenile court's jurisdictional findings for substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

B. Analysis

"The purpose of section 300 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.' [Citation.]" (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.)

With that in mind, section 300 provides, in relevant part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. . . . [¶] (b) The child has suffered, or there is a *substantial risk* that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the

child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subds. (a) & (b), italics added.)

To find a minor a person described in section 300, subdivision (b), there must be proof of neglectful conduct, causation, and a substantial risk of serious physical harm. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Mother objects to the juvenile court's findings regarding both of the sustained counts of the section 300 petition. We address each in turn, remembering that we may affirm a juvenile court's jurisdictional findings if substantial evidence supports any one of the counts involving the children. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–877; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) "Section 300, subdivisions (a) through (j), establishes several bases for dependency jurisdiction, any one of which is sufficient to establish jurisdiction." (*In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

Regarding section 300, subdivision (a), there is ample evidence of serious, nonaccidentally inflicted harm or risk of harm to I. On June 22, 2011, when I. was four months pregnant, mother pushed her, put her hands on her shoulder/chest area, punched her arm, scratched her face, grabbed her hair, kicked her, choked her, and put a knife up to I.'s neck. And, this was not mother's first physical assault upon I. Both I. and D. reported that mother had hit I. on multiple occasions. Mother's physical abuse of I. on June 22, 2011, as well as on prior occasions, put I. at a serious risk of physical harm. Thus, the juvenile court properly sustained count a-1 under section 300, subdivision (a).

Similarly, substantial evidence supports the juvenile court's finding under section 300, subdivision (b). Mother failed to protect I. She failed to ensure that I. had prenatal care and refused to allow I. to take prenatal medication during the first four months of her pregnancy. Moreover, there is evidence that mother knew that I. was living with Junior and, despite claiming that she had an issue with him, she allowed I. to stay with him in Riverside where they continued to engage in unlawful sexual intercourse.

In urging us to reverse, mother claims that any "lack of supervision" would not be "inherently dangerous" because I. was "old enough to avoid the kinds of dangers which make infancy an inherently hazardous period of life." And, in any event, I.'s issues were

the result of her "own incorrigible behavior." In light of the evidence set forth above, we cannot agree.

II. *Substantial evidence supports the juvenile court's order sustaining count b-1 of the section 342 petition*

Section 342 provides, in relevant part: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition."

Count b-1 of the subsequent section 300 petition is supported by substantial evidence. It alleges that mother placed I. at substantial risk by allowing her to spend several days and nights with Junior. Mother never inspected the barn to verify the living conditions. It was discovered that Junior was living in a barn. There was no heater or running water inside the barn. There was dog feces inside the room where Junior, I., and the twins were living. There were dirty and soiled blankets on the mattresses, which were on the floor. The room smelled very bad. These conditions certainly placed I. at risk of serious physical harm, thereby supporting the juvenile court's order.

III. *Substantial evidence supports the juvenile court's removal order*

A. Standard of Review

We will affirm a removal order so long as it is supported by substantial evidence. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 463.)

B. Analysis

The juvenile court is empowered to remove a dependent child from the physical custody of the parent with whom the child resided when the section 300 petition was filed if the juvenile court finds clear and convincing evidence that "(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).)

For the same reasons set forth above, substantial evidence supports the juvenile court's removal order. There is ample evidence that I. was and is at risk as a result of mother's physical abuse. Simply put, mother did not provide a safe environment for I. Additionally, mother allowed I. to spend several nights with Junior without first assessing his home to assure that it was safe and clean. Her inadequate supervision of I. justifies the juvenile court's order.

IV. *ICWA Notice was not Satisfied*

Finally, mother argues that the matter must be remanded for compliance with the ICWA's notice requirements.

"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).) At the hearing on March 14, 2012, mother advised the juvenile court of possible Choctaw ancestry. Her attorney informed the court that the Indian ancestry would be the maternal great-grandfather named "John." Although mother did not know his last name, mother indicated that the maternal great-grandmother might know the information.

Because this matter proceeded to disposition prior to a further inquiry by DCFS and notice to the Choctaw tribe, the matter is remanded to the juvenile court with directions to order DCFS to attempt to obtain additional ICWA information from mother or any other available relative and to ensure that proper ICWA notice is given. (*In re Brooke C.*, *supra*, 127 Cal.App.4th at pp. 384–385.)

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ